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In the

Supreme Court of the United States

OCTOBER TERM, 1975

CARLA A. HILLS, Secretary of Housing and Urban Development,

Petitioner,

vs.

DOROTHY GAUTREAUX, et al.,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

BRIEF FOR RESPONDENTS

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On Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

BRIEF OF RESPONDENTS

QUESTION PRESENTED

Whether *Milliken* v. *Bradley,* 418 U.S. 717, precludes a federal court from ordering remedial action encompassing a single housing market area against the U.S. Department of Housing and Urban Development when the Department has been found liable for carrying on racial discrimination in federal housing programs in a substantial portion of that market area.

CONSTITUTIONAL AND STATUTORY PROVISIONS

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ." *U.S. Const. Amend. V.*

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 601, Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. §2000d.

"The Secretary of Housing and Urban Development shall . . . administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies [fair housing] of this subchapter." Section 808(e)(5), Civil Rights Act of 1968, 82 Stat. 84, 42 U.S.C. §3608(d)(5).

STATEMENT

Reversing a 1970 order of the district court,* the Court of Appeals for the Seventh Circuit held in 1971 that the U.S. Department of Housing and Urban Development ("HUD") had "violated the Due Process Clause of the Fifth Amendment . . . and also . . . Section 601 of the Civil Rights Act of 1964 . . ." *Gautreaux* v. *Romney*, 448 F.2d 731, 740 (C.A. 7, 1971). The holding was based on the determination that, in conjunction with the Chicago Housing Authority ("CHA"), and by specifically approving and funding sites for housing projects which it knew had been selected in a racially discriminatory manner (*Id.* 737), HUD had intentionally exercised its powers in support of a scheme which "perpetuated a racially discriminatory housing system in Chicago." (*Id.* 739.) Pursuant to "a deliberate policy to separate the races," the discrimination consisted of locating federally subsidized housing almost exclusively in black neighborhoods, thereby to "keep . . . neighborhoods White and to deny admission [to White neighborhoods] to Negroes via the placement of public housing." *Gautreaux* v. *CHA*, 296 F.Supp. 907, 914 (N.D. Ill. 1969); see *Gautreaux* v. *Romney, supra*, 448 F.2d at 740.**

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* Appendix A to the petition for certiorari.

** The discriminatorily located housing consisted of over 30,000 dwelling units on some 64 sites. 296 F.Supp. at 910. Approximately 150,000 persons live in this housing, which CHA calls "a 'city' within a city, in population the second largest in Illinois." (1971 CHA Annual Report, p.3, CHA Quarterly Report No. 5, Attachment No. 5, Record Doc. 274.) CHA also discriminated in tenant assignment. See 296 F.Supp. at 909.

CHA, which was deeply involved in the discrimination, had earlier (in 1969) been held separately liable and subjected to a remedial order.* However, the court of appeals said that its holding as to HUD's liability was not based on the "joint participation" doctrine of *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961), but upon the fact that HUD's actions "constituted racially discriminatory conduct in their own right." (448 F.2d at 739.) This determination of HUD's separate liability is the law of the case and is concededly not now at issue before this Court. (Petition for certiorari, p.5, n.4.) Thus, the remedial duty "so far as possible [to] eliminate the discriminatory effects of the past," *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965), became an obligation of HUD separate and distinct from CHA's parallel duty.

Under the federal housing programs within which the HUD-CHA discrimination occurred, the role of local public agencies such as CHA, though important, is sub-

* Cases against CHA and HUD were filed simultaneously but separately. On the district court's own motion proceedings against HUD were stayed pending disposition of the CHA suit. The two cases were later consolidated on HUD's motion, their present posture. The major decisions in the case to date are: (1) the original judgment order against CHA and a modification of it—296 F.Supp. 907; 304 F.Supp. 736; 436 F.2d 306, cert. denied 402 U.S. 922; (2) the determination of HUD's liability and proceedings respecting relief against it—district court decision of September 1, 1970 (unreported; Appendix A to the petition for certiorari); 448 F.2d 731; 332 F.Supp. 366; 457 F.2d 124; 363 F.Supp. 690; 503 F.2d 930; (3) proceedings setting aside the Chicago City Council's veto power over CHA site selection—342 F. Supp. 827; 480 F.2d 210, cert. denied, 414 U.S. 1144; and (4) reference to a special master to identify reasons for delay in implementing earlier orders and to make recommendations—384 F.Supp. 37; 511 F.2d 82; district court decision entered May 8, 1975 (unreported; App. 221).

ordinate to the ultimate supervisory power and obligation of HUD to administer those programs to achieve national housing objectives.* While maximum responsibility is to be vested in local agencies, subject to giving "due consideration to accomplishing" and "consistent with" federal objectives, 42 U.S.C. §§1401, 1437, HUD possesses "ultimate supervision and authority in carrying out the objectives of the Housing Act" and "ultimate responsibility for policy . . . to achieve uniformity in fulfilling the objectives of the Act . . ." *Housing Authority of City of Omaha* v. *United States Housing Authority,* 468 F.2d 1, 7 (C.A. 8, 1972).**

* The four forms of federal housing programs involved here are all established by the United States Housing Act of 1937, as amended, 42 U.S.C. §1401 et seq., and are familiarly known as the "conventional," "turnkey," "leased housing" and "housing assistance" programs, respectively. 42 U.S.C. §§1409 et seq., 1421b, 1437f. All involve the use of federal funds to provide "subsidized" housing for persons of low income, the precise form of the subsidy varying from program to program. In very general terms, conventional housing is typically constructed and owned by a public, state-created housing agency, turnkey housing is privately constructed but owned by a public agency and leased housing is privately owned and leased by a public agency, while under the housing assistance program housing may be either privately or publicly owned and is leased by a beneficiary family whose rent is partially paid with public funds. The initial remedial orders against CHA and HUD applied to the first three programs, the only ones then in existence. After the housing assistance program was established by the Housing and Community Development Act of 1974, a further remedial order was entered by the district court on May 8, 1975, relating to that program. (App. 221.)

** Opposing certiorari in *Omaha,* the Government said that the court of appeals "correctly determined that Section 1401 does not restrict HUD's 'responsibility and

Consistent with its "ultimate responsibility," HUD's role in the administration and financing of federal housing programs is pervasive. In its 1971 opinion the court of appeals said:

> "[T]here can be no question that the role played by HUD in the construction of the public housing system in Chicago was significant. The great amount of funds for such construction came from HUD. . . . The [HUD] Secretary's trial brief acknowledged that 'in practical operation of the low-rent housing program, the existence of the program is entirely dependent upon continuing, year to year, Federal financial assistance.' . . . Moreover, within the structure of the housing programs as funded, HUD retained a large amount of discretion to approve or reject both site selection and tenant assignment procedures of the local housing authority. HUD's 'Annual Contributions Contract' contained detailed provisions concerning program operations and was accompanied by eight pages of regulations on the subject of site selection alone." *Gautreaux* v. *Romney, supra,* 448 F.2d at 739.

** (Continued)
concomitant authority to protect and further the purposes and objectives of the Act . . .'" (Brief for the Federal Respondents in Opposition to Certiorari, No. 72-793, p.9.) HUD's Eighth Circuit brief said it was "clear that HUD possesses authority to regulate matters involving broad national policy." (HUD's Brief in the Eighth Circuit, Nos. 72-1102 and 72-1185, p.21.) It also said that the legislative history of the so-called "local autonomy" amendment to Section 1401 (which provides that maximum responsibility in the administration of the low rent housing program should be vested in local public housing agencies, with due consideration to accomplishing the objectives of the law) demonstrated that Congressional concern "centered around budget control, audits, rents and eligibility requirements," and that even in these areas "far less than full control was given to the local housing authorities." (*Id.* 19, 25.)

This quotation does not fully reflect the scope and depth of the federal financial and administrative role. Originally the subsidized housing program was exclusively federal.* When the law was amended to provide for local participation it still called for the full capital costs of the program to be borne by the federal government, and this remains true today. 42 U.S.C. §§1410, 1437c. In recent years the federal government has in addition paid a portion of operating expenses. 42 U.S.C. §§1410(a), 1437g. The pervasive nature of the federal administrative role is illustrated not only by the Annual Contributions Contract referred to by the court of appeals (Part One of HUD's contract with CHA is 22 single-spaced typewritten pages, plus numerous amendments, and Part Two is a 56 page printed booklet containing 97 sections, each on a distinct subject), but by voluminous regulations which HUD issues from time to time, of which the eight pages on site selection noted by the court of appeals are only a part, and by additional requirements which according to HUD "are the minimum considered consistent with fulfilling Federal responsibilities." *Thorpe* v. *Housing Authority of Durham,* 393 U.S. 268, 275 (1969). (The CHA contract is Record Item 20 in Appeal No. 71-1073, part of the Record here.)

Recognizing this pervasive federal role Illinois law, which otherwise vests in the Illinois Department of Local Government Affairs supervisory powers over local housing agencies, exempts from such powers a housing project

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* 48 Stat. 195. For a brief history see Lawrence M. Friedman, *Government and Slum Housing* (Rand McNally 1968), pp. 99-104. A lengthier account appears in Charles Abrams, *The Legal Basis for Reorganizing Metropolitan Areas in a Free Society,* 106 Proceedings of the American Philosophical Society 177 (1962).

financed in whole or in part by the federal government "so long as such project is supervised or controlled by the federal government . . ." Ill.Rev.Stat. ch. 67½, §13.

HUD's role was further enlarged by a 1974 amendment to the United States Housing Act of 1937. Whereas prior to the amendment federally subsidized housing under the Act was provided only through the joint action of HUD and local housing agencies, the amendment conferred additional powers upon HUD to provide such housing without the participation of local agencies. HUD may now contract directly with private developers for the construction and substantial rehabilitation of housing, 42 U.S.C. §1437f(b)(2), and with private landlords for the leasing of existing housing units (not newly constructed or substantially rehabilitated) to eligible families where a local housing agency does not exist or for any reason does not carry on this "existing housing" program, 42 U.S.C. §1437f(b)(1).* The Conference Committee Report says that under the 1974 amendments "primary responsibility" for program administration is placed in the Secretary of HUD (Compilation of the Housing and Community Development Act of 1974, Subcommittee on Housing of the House Committee on Banking and Currency, 93rd Cong. 2d Sess., p.312), and HUD has indicated that its major emphasis in providing subsidized housing in the future will be to utilize the arrangements authorized by the 1974 amendments. (Hearings, Subcommittee of the Committee on Appropriations, House of Representatives, 94th Cong. 1st Sess., Part 5, April 14, 1975, pp. 119-20.)

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* HUD's "existing housing" regulation provides that if no local housing agency is organized or "able and willing" to implement the relevant provisions of the statute for a particular area, HUD may do so itself. 24 CFR §1275.104(b).

In exercising these extensive housing powers HUD is governed by national housing objectives found in a number of statutes which are to be read *in pari materia* with each other. *Shannon* v. *United States Department of Housing and Urban Development*, 436 F.2d 809, 817 (C.A. 3, 1970). The most general policy declarations are: "[T]he realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . .," in pursuit of which objectives all agencies having housing powers "shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act . . .", 42 U.S.C. §1441; and, "[T]o provide, within constitutional limitations, for fair housing throughout the United States," 42 U.S.C. §3601. It is of course a particular national objective to remedy the housing shortage for families of low income, 42 U.S.C. §§1401, 1437, that is, families "who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use." 42 U.S.C. §§1402(2), 1437a(2).

The specific national housing objectives that are of special relevance in this case are: to prevent discrimination in federal housing programs, 42 U.S.C. §2000d; to administer federal housing programs in a manner affirmatively to further fair housing, 42 U.S.C. §3608(d)(5); to reduce the concentration of persons of lower income in central cities, 42 U.S.C. §5301(a)(1); and to foster

the spatial deconcentration of housing opportunities for persons of lower income. 42 U.S.C. §5301(c)(6).*

Since the racial discrimination in this case had consisted of confining blacks to established black neighborhoods and preventing them from entering white neighborhoods via subsidized housing by placing such housing almost exclusively in black areas, the essential elements of the remedial order entered in 1969 against CHA (while proceedings against HUD remained stayed on the district court's own motion) were: (1) to require that future subsidized housing be located predominantly in white neighborhoods of Chicago; and (2) to require that a proportion of such future housing (50%) be made available to the plaintiff class. 304 F.Supp. 736. The order also provided that at CHA's option up to one-third of the future housing (following the initial 700 dwelling units) might be located in the suburban portion of Cook County outside Chicago. 304 F.Supp. at 739. (Except for a small portion of O'Hare Airport which is in DuPage

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* In *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972), this Court quoted one of the Senate sponsors of 42 U.S.C. §2000d as follows:

> "[T]he reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.'"

The Second Annual Report on National Housing Goals of the President says:

> "It is imperative to reverse the trend toward a society that is becoming geographically divided not only on a racial basis but on economic and social bases as well. There must be an end to the concentration of the poor in land-short central cities, and their inaccessibility to the growth of employment opporunities in suburban areas." House Document No. 91-292, 91st Cong. 2d Sess., U.S. Govt. Printing Office, April 2, 1970, pp. 20-21.

County, Chicago is bounded by Cook County on the North, West and South and by Lake Michigan on the East.) Pursuant to such authorization CHA later contracted with the Housing Authority of Cook County for "housing in areas outside the municipal boundaries of the City of Chicago . . . to house low income families who are residents of Chicago and who are certified by CHA to be eligible for housing." CHA Quarterly Report No. 5, Attachment No. 14, p.1, Record Doc. 274. The contract was submitted to and approved by HUD. *Id.*, Attachment No. 11.

Following entry of the 1969 remedial order against CHA plaintiffs resumed the theretofore stayed proceedings against HUD. They immediately sought relief with respect to that portion of federal housing subsidy funds allocated by HUD for use within the Chicago metropolitan area. HUD urged dismissal of the action against it for the reason, among others, that the voluntary remedial steps it was then taking in the metropolitan area would supposedly achieve the needed remedy.* It said that since the entry of the remedial order against CHA it had focused on three objectives: improving the environment for Chicago public housing residents, providing additional federally subsidized housing in Chicago, and

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* Plaintiffs' motion for summary judgment against HUD sought relief relating to "that portion of HUD's resources which the Secretary in his discretion determines to allocate to the Chicago housing market area." (Pet. App. 15a.) For a discussion of the term "housing market area," see Part I of the Argument, *infra*. HUD's argument was captioned, "The Plaintiffs' Objectives will be More Readily Achieved by the Voluntary Efforts of the Defendant (HUD) than by the Coercion of a Judicial Decree." HUD Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, p. 22, Record Item 52 in Appeal No. 71-1073, part of the Record in this case.

providing additional federally subsidized housing in the Chicago suburban area. (Affidavit of Don Morrow, June 8, 1970, p. 1, Record Item 52, Appeal No. 71-1073, App. 44.) Respecting the third objective HUD advised the district court as follows:

> "Pursuit of the third objective of building in the suburbs has called for a multiplicity of actions. One level of our activity has been to help identify sites for low rent housing . .
>
> The development of the criteria was done in cooperation with the CHA and the Cook County Housing Authority . . .
>
> The Northeastern Illinois Planning Commission has agreed to undertake an identification of the locations within the Chicago metropolitan area where low and moderate income housing should be built . . . using the criteria . . ." (*Id.* 2-3, App. 46-47.)

Finding the "putative limits of its powers . . . effectively circumscribed" (Pet. App. 16a), the district court granted HUD's motion to dismiss the complaint for jurisdictional reasons and for failure to state a claim for relief. (*Id.* 7a-8a, 13a.) The court of appeals then reversed this judgment in favor of HUD and remanded for a determination of appropriate relief, saying that, while extremely important, the question of relief was not before it. (448 F.2d at 734.) Specifically, the court declined to express a view as to whether the requested relief involving the Chicago metropolitan area was "either necessary or appropriate." (*Id.* 736.)

On remand the district court called upon the pa ties to submit proposed comprehensive remedial plans, including "alternatives which are not confined in their scope to the geographic boundary of the City of Chicago." (Order of December 23, 1971, App. 50.) In the ensuing

proceedings each of the parties stated that only metropolitan relief would be effective. Congressional testimony of then HUD Secretary George Romney, submitted to the district court by HUD, read:

> "[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community. The City and the suburbs together make up what I call the 'real city.' *To solve problems of the 'real city' only metropolitan wide solutions will do.*" (Statement of George Romney, Appendix A, pp. 15-16, to HUD Memorandum, Record Doc. 283, emphasis supplied.)

In addition HUD joined the respondents in specifically representing to the district judge that a metropolitan remedy was "desirable" and a concept it "endorse[d]," and that it would be willing to participate in the development of such a remedy if state and local governments would "take the lead." (Transcript of Proceedings, Feb. 22, 1972, pp. 4-7, App. 62-64)* CHA likewise took the position that only a metropolitan remedy would be effective:

> "CHA fully agrees that public housing must be metropolitan in nature, and not confined to the City of Chicago. It has so stated on numerous occasions before this court. It has offered testimony that *a dispersal program for public housing will not work unless it is operated on a metropolitan basis.*" (CHA Memorandum, p. 27, Record Doc. 167, emphasis supplied.)

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* HUD later said it was "by no means clear" that a metropolitan remedy was necessary, but it then subsequently reaffirmed "the desirability of a metropolitan wide plan," explaining that its previous statement was only intended to raise "various legal objections to the particular plan plaintiffs have proposed . . ." (HUD Memorandum, pp. 7-10, Record Doc. 310.)

In response to the district court's request for remedial proposals plaintiffs submitted a suggested form of metropolitan judgment order. (Plaintiffs' Proposed Judgment Order, September 25, 1972.) While declining to submit a comprehensive remedial plan HUD advised the district court that its "best thinking" was represented by an agreement it had entered into with CHA and the City of Chicago calling for a variety of actions to be taken by the three signatory parties. (Response of George W. Romney, April 26, 1972, pp. 2-3.) Among other metropolitan actions the agreement called for the development by CHA in cooperation with the Cook County Housing Authority of approximately 500 dwelling units outside the boundaries of Chicago, and for CHA to lease approximately 600 additional dwelling units throughout the metropolitan area. (Plaintiffs' Exhibit No. 18, pp. 7-8, to Hearing of November 27-29, 1972. App. 152-53.) Nonetheless, HUD proposed a judgment order which essentially directed it to cooperate with CHA in implementing remedial orders previously entered, and involved no metropolitan relief other than "cooperation" as to the optional Cook County portion of the 1969 order against CHA. (Appendix A to Response of George W. Romney, April 26, 1972.)

In the evidentiary hearing held thereafter on the relief to be granted against HUD, plaintiffs further showed the need for metropolitan relief while CHA offered no evidence at all and HUD's evidence was confined to the asserted lack of federal housing subsidy funds then available. (Transcript of Proceedings, November 27-29, 1972, pp. 367, 330-48. See 503 F.2d at 934.*) Summarizing the

* The lack of subsidy funds was remedied by the passage of the Housing and Community Development Act of 1974. Public Law 93-383; 88 Stat. 633, *et seq.* HUD estimates that up to 400,000 dwelling units will be federally

foregoing and other statements of the parties and evidence on the subject, the couurt of appeals later said:

> "[T]he parties are in agreement that the metropolitan area is a single relevant locality for low rent housing purposes and that a city-only remedy will not work . . . All of the parties, the Government officials, the documentary evidence, the sole expert and the decided cases agree that a suburban or metropolitan area plan is the *sine qua non* of an effective remedy." *Gautreaux* v. *CHA and James T. Lynn*, 503 F.2d 930, 937, 938-39 (CA 7, 1974).

Notwithstanding this unanimity of the parties as to the need for metropolitan relief, the district court ultimately declined to consider any further such relief. Instead it entered HUD's proposed, largely non-metropolitan judgment order. (363 F.Supp. 690, 691.) On appeal the district court's ruling against considering additional metropolitan relief was reversed and the case was again remanded "for additional evidence and for further consideration of the issue of metropolitan area relief in light of this opinion and that of the Supreme Court in *Milliken* v. *Bradley*." (503 F.2d 930, 940.) This is the decision now here for consideration on HUD's petition for certiorari. CHA has not sought review.

* (Continued)

subsidized during the fiscal year beginning July 1, 1975, approximately 300,000 of which will be new or substantially rehabilitated. (HUD News, Remarks Prepared for Delivery by Carla A. Hills, Secretary of HUD, July 2, 1975.)

SUMMARY OF ARGUMENT

Unlike *Milliken* v. *Bradley,* in which no federal program or agency was involved and which dealt with the proposed consolidation of local school districts, this case involves a subsidized housing program: (1) which is established by federal, not local, law; (2) which is financially supported by federal, not local, funding; (3) which is pervasively (though not exclusively) federal in administration; (4) in which, separately and independently of the established liability of local officials, the federal administering agency has been adjudicated liable for its own acts of racial discrimination in its conduct of the housing program; and (5) in which the proposed remedial action could be limited to the federal agency and, even if extended to local agencies, would not involve the consolidation of any local governmental units.

In that context we first accept *arguendo* the Government's view that regardless of practical and other equitable considerations *Milliken* precludes inter-school district relief in every case that does not involve inter-school district segregative acts or effects, and we show that for each of two independent reasons metropolitan relief against HUD is not inconsistent with *Milliken.* The first of the two reasons is that in all four of the housing programs involved here HUD defines and employs a "housing market area" geographic unit as the relevant geographic area within which to address the problem of the concentration of minority housing opportunities presented by this case. Relief against HUD which encompassed the housing market area would therefore not be "inter-district" under *Milliken* and would not be broader than necessary—by HUD's own determination—to remedy the effects of HUD's racial discrimination in this case. (Part I of the Argument.)

The second and separate reason is that there is evidence in this case of racial discrimination by HUD in the suburban portions of the housing market area as well as evidence (in the form of acknowledgments by HUD) that the effects of the type of discrimination practised in this case spread across city-suburban lines. Thus, even if relief against HUD which encompassed the portion of the housing market area outside of Chicago were to be viewed—improperly, we think—as "inter-district" relief, *Milliken's* requirements for such relief (under the Government's interpretation of that case) would be satisfied here. (Part II of the Argument.)

Finally (in Part III of the Argument), we explain why we do not believe the Government's reading of *Milliken* is correct. We then go on to show, under what we view as a proper interpretation, that apart from the reasons already discussed *Milliken* does not foreclose metropolitan relief against HUD for three reasons: (1) Equitable factors similar to those that were decisive againt metropolitan relief in *Milliken*—a deeply rooted tradition of local control, serious problems atteding large scale transportation of students, an array of other problems attending the consolidation of local school systems, and the likelihood that a complete restructuring of local school district laws would be entailed—are wholly absent here, as are the coercive and "racial balance" aspects of the relief proposed there; (2) The practical considerations said by the Government to militate against metropolitan relief in this case—local control over land use, the federal statutory scheme, costs and burdens supposedly to be entailed, and problems attending the allocation of remedial housing—in fact present no obstacles to such relief against HUD; and (3) Metropolitan relief against HUD would be practical, judicially manageable and consistent with Congressional

policy, and is necessitated by traditional equitable principles.

(The Government's brief deals extensively—indeed, almost exclusively—with the separate question of metropolitan relief against local housing agencies. We therefore also show in Part III that for these same reasons extending metropolitan relief to such agencies is not foreclosed by *Milliken*. However, since CHA has not sought review and the pleadings respecting other housing agencies have not yet joined issue, we do not believe that the separate question of extending metropolitan relief to local housing agencies is now properly before the Court.)

ARGUMENT

I. Housing Market Area Relief Against HUD is Neither "Inter-District" under Milliken nor Broader than Necessary to Remedy the Effects of HUD's Violation in this Case.

The Government contends that metropolitan relief in this case would breach the equitable principle that the nature and extent of a violation determine the scope of the remedy for its effects. Among the reasons why that contention is incorrect is the Government's erroneous assumption that metropolitan relief against HUD in this case would be "inter-district" relief under *Milliken* v. *Bradley*. In fact, HUD has determined that a single "housing market area" is the proper geographic area within which to address the problem of minority concentration presented here—and, indeed, is the proper area to use in responding to the adjudication against it in this very case. As we show in this Part I, relief against HUD that encompasses the area HUD thus itself defines and employs as the relevant geographic area is neither "inter-district" nor broader than necessary, by HUD's own determination, to remedy the effects of HUD's violation in this case.

In its administration of federal housing programs HUD employs a geographic unit, the "housing market area," which is the area within which residents of a population center look for, or are in the "market" for, housing. In all four of the housing programs involved here HUD employs the housing market area as the relevant

geographic area within which to address the problem of minority concentration.*

HUD defines the housing market area as "the geographic entity within which nonfarm dwelling units are in mutual competition." (Department of Housing and Urban Development, Federal Housing Administration, *Techniques of Housing Market Analysis,* January 1970, p. 10.) Since housing market area boundaries "normally encompass those geographical areas in which there is an identifiable relationship between place of work (non-farm) and place of residence" (Department of Housing and Urban Development, *Urban Housing Market Analysis,* 1966, p. 5), a housing market area usually extends beyond city limits. Generally, as in the case of Chicago, it is identical with the Standard Metropolitan Statistical Area.**

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* HUD employs the market area for other purposes as well, e.g., to define the geographic area within which developers of subsidized housing must affirmatively market their housing to minority groups, 24 CFR §200.610, and to determine the need for low-income housing, 24 CFR §200.710 (pp. 233-34).

** "The housing market area usually extends beyond the city limits, regardless of the magnitude of the market under consideration. . . For practical purposes, the Standard Metropolitan Statistical Area may be delineated as the housing market area in those cases where an SMSA has been established." (Department of Housing and Urban Development, Federal Housing Administration, *Techniques of Housing Market Analysis,* January 1970, pp. 12-13.)

Standard Metropolitan Statistical Areas "are prepared by of Office of Management and Budget to determine areas of economic and social integration, principally on the basis of the commuting patterns of residents." *United States* v. *Connecticut National Bank,* 418 U.S. 656, 670 (1974).

In 1972 HUD promulgated regulations, called "Project Selection Criteria," which established mandatory criteria to be used by HUD in evaluating and processing housing proposals under the United States Housing Act of 1937.* The criteria "represented the first major effort by the Federal Government to consider systematically the social and environmental impart of subsidized housing on the nation's communities." (Department of Housing and Urban Development, *Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation,* December 1972, Foreword.) They "grew out of a general disenchantment with policies which largely ignored such considerations; but more specifically, they were developed in response to the mandate of the 1968 Civil Rights

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** (Continued)

"The Chicago, Illinois, Housing Market Area is defined as being coterminous with the six-county Chicago Standard Metropolitan Statistical Area (SMSA), which, as currently defined, consists of Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Illinois." (Department of Housing and Urban Development, *Analysis of the Chicago, Illinois Standard Metropolitan Statistical Area Housing Market,* June 1966, p. 1.)

* 24 CFR §200.700, *et seq.* As published in the Federal Register the criteria are in evidence as Plaintiffs' Exhibit No. 16 to the hearing of November 27-29, 1972. With certain exceptions for proposals involving small numbers of units the Project Selection Criteria applied initially to the conventional, turnkey and leased housing programs, as well as to several other housing programs established under laws other than the United States Housing Act of 1937. 24 CFR §200.710 (p. 233). They also appear to apply to the housing assistance program created in 1974. See 24 CFR §§1273.103(j)(2), 1275.103(i), 1277.103(j)(2). In addition a similar requirement respecting minority concentration appears in a separate regulation governing new housing provided under this program as discussed in the text below.

Act and several court decisions requiring the Department of Housing and Urban Development to assess the impact of its decisions on areas of minority concentration, as well as the availability of housing opportunities in non-segregated areas for minority citizens." (*Ibid.*) Among the decisions referred to is the court of appeals decision in *Gautreaux* v. *Romney, supra,* 448 F.2d 731. (Id. 13-15.)*

The purpose of the criteria is to eliminate "unacceptable" proposals for subsidized housing and to assign priorities in funding "to assure that the best proposals are funded first." 37 Fed. Reg. 203 (1972). HUD thus uses the Project Selection Criteria as a means of determining which housing proposals to fund (and in what order) and which to reject. A proposal must receive a rating of "superior" or "adequate" on each criterion to be funded

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* Further explaining the background of the criteria HUD quotes then Secretary Romney as follows:

> "[I]f there is one lesson we have learned in our national experience with Federally assisted housing, it is that the concentration of large numbers of institutional-style units in areas of minority racial concentration produces undesirable results. It fosters the social isolation of the poor and minority groups. In many instances, it also deprives the poor and members of minority groups from living within a reasonable distance of jobs. When such concentrations have occurred in central cities, they have contributed to the physical and social deterioration of the city, and have hastened the exodus from the cities of the more stable elements of society.
>
> "Accordingly, it seems obvious that if the nation's housing goals are to be met without further exacerbation of the problems resulting from past policies, the Federally subsidized housing of the future must be designed and located differently than has been the case in the last thirty years." (*Id.* 7.)

at all; a proposal that receives a rating of "poor" under any criterion will automatically be rejected. (*Ibid.*)

One of the criteria, entitled Minority Housing Opportunities, deals directly with the issue of minority concentration.* The stated objectives of that criterion are "To provide minority families with opportunities for housing in a wide range of locations," and "To open up nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination." (*Id.* 206.) Compliance with the Minority Housing Opportunities criterion is specifically measured in terms of the housing market area. For example, a "superior" rating is earned if a proposed project "will be located . . . [s]o that, within the housing market area, it will provide opportunities for minorities for housing outside existing areas of minority concentration and outside areas which are already substantially racially mixed . . ." (*Ibid.*) An "adequate" rating will be given a project located in an area of minority concentration but which is necessary to meet housing needs which "cannot otherwise feasibly be met in that housing market area." (*Ibid.*)

In adopting the Project Selection Criteria HUD specifically rejected suggestions that housing market areas be

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* Although as ultimately promulgated the Project Selection Criteria also dealt with matters other than racial concentration and the effects of past discrimination, according to HUD the origins of the criteria may be traced to the racial concentration issue and their development was "in large part" intended to reflect the requirement of the 1968 Civil Rights Act that HUD administer its programs in a manner affirmatively to further the fair housing policies of Title VIII of that Act. (*Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation, supra,* pp. 8-9.)

defined to coincide with the boundaries of local political jurisdictions:

> "It was suggested that the term 'housing market area,' used several times in the criteria, should be defined to coincide with boundaries of local political jurisdictions. It was also suggested that certain parts of housing market areas should be allotted housing funds irrespective of ratings on the criteria. The Department has declined to adopt these suggestions because *housing market areas often are independent of arbitrary political boundaries* and allotments to certain parts of those areas could result in the Department's approving projects which would be less than the best that could be created for the people of each housing market area."(*Id.* 203, emphasis supplied.)

Additional regulations governing new housing under the housing assistance program established in 1974 contain location criteria similar to the Minority Housing Opportunities criterion of the Project Selection Criteria. They provide that sites for newly constructed housing shall not be located in areas of minority concentration unless sufficient comparable housing opportunities for minority families exist outside such areas or there are overriding housing needs "which cannot otherwise feasibly be met in that housing market area." 24 CFR §1273.103(j)(3).

HUD has also adopted the housing market area approach in interpreting the statutory authority for the leased housing program. The statute requires that leased housing be "calculated to meet the total housing needs of the community in which they [dwelling units] are located." 42 U.S.C. §1421b(a)(3). In approving CHA's contract with the Cook County Housing Authority HUD concluded that in using the term "community" Congress intended to refer not to a local political unit but to the housing market area:

> "[W]e have concluded that Section 23 [42 U.S.C. §1421b] units in a given 'locality' may be used to meet housing needs beyond the political boundaries of the locality . . . [W]hat Congress intended by the term 'community', as used in Section 23(a)(3) [42 U.S.C. §1421b(a)(2)], was not a political subdivision, as such, but the housing market area in which the housing to be leased is located." (Attachment No. 11, p. 1, to CHA Report No. 5, Rec. Doc. 274.)*

In short, HUD has determined that the housing market area is the proper geographic area for addressing the issue of deconcentrating minority housing opportunities to carry out Congressionally established fair housing policy. Indeed, the Project Selection Criteria reflect a determination by HUD that the market area is the proper area for use in responding to the adjudication against it in this very case. It is appropriate, therefore, that a remedial order against HUD encompass the area HUD itself defines and employs as relevant to the issue of "open[ing] up nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination." Respecting HUD's powers the Chicago Housing Market Area is the relevant "district."

This, we submit, should be dispositive of this case. Nothing in *Milliken* v. *Bradley* compels an equity court to ignore these facts and restrict its remedy as it applies

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* HUD has also interpreted state statutes relating to local housing agencies as reflecting a determination that "the city and its surrounding area comprise a single 'locality' for low-rent housing purposes." (Plaintiffs' Exhibit 13, p. 304.)

to HUD's funding and administrative powers to a limited portion of the housing market area. In *Milliken* the Court did not deal with a geographic area, administratively determined by the defendant agency to be the appropriate area for relevant program purposes, that extended across local political boundary lines. Neither did the Court there confront a situation in which a defendant federal agency already possesses and exercises authority to administer federal programs to achieve Congressionally mandated national housing objectives on such an areawide geographic basis. In this case, therefore, a decree respecting HUD's powers that encompassed the housing market area would not involve "inter-district" relief under Milliken.*

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* *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973), is a closer analogue to this case than *Milliken*. In *Keyes* the Court held that relief throughout a school district was proper upon a showing of deliberate racial discrimination in a substantial portion of the district and unexplained segregated conditions in other portions. These requirements are met here as to the Chicago Housing Market Area—the first by the uncontested adjudication of HUD's liability, the second by plaintiffs' Exhibit No. 11 showing segregated conditions in suburban portions of the market area. Although *Keyes* left for determination on remand whether the school district could be divided into "separate, identifiable and unrelated units," 413 U.S. at 203-04, here the housing market area is defined as the area within which dwelling units are in "mutual competition." By definition, therefore, the market area is not so divisible.

The Government contends that Exhibit 11 does not show *de jure* suburban discrimination by HUD (a matter discussed in Part II below), but no contention can be made that the exhibit fails to show segregated conditions. That there were no allegations in the complaint respecting suburban areas does not of course preclude a court of equity from considering the suburban evidence as it bears on effective relief. See *Louisiana* v. *United States*, *supra*, discussed in the text *infra*.

Virtually the only comment in the Government's brief on the housing market area as the relevant "district" for relief against HUD is the contention that a proposed remedy cannot be "proper" as to HUD if it is "improper" as to local housing authorities, that if metropolitan relief would be "inter-district" as to such authorities it must be "inter-district" as to HUD as well. (Br. 15-16, n.14.)* The Government's argument is unpersuasive on two grounds.

First, it rests on the erroneous assertions that "local housing authorities . . . are necessary participants in the provision of adequate housing" and that "HUD implements its plans through local housing agencies." (Br. 16, n.14.) We have pointed out in the Statement above, and the Government has previously acknowledged (Reply Mem. 2, n.1), that HUD is now empowered to contract directly with private developers for newly constructed and substantially rehabilitated subsidized housing *to the exclusion of any local housing authority participation*, and that it may itself administer the existing housing program wherever it determines that a public housing agency is for any reason unable or unwilling to implement that program. Thus, even if *Milliken* barred metropolitan relief as to local housing agencies, such relief would not on that account be either barred or futile respecting HUD's independent powers—and independent remedial obligation—to provide housing by direct contract with private developers and landlords without the participation of local housing agencies, powers which HUD exercises under its own existing regulations on a market area basis with respect to the matter of minority concentration.

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* The Government's separate contention that metropolitan relief confined to it would be impractical is discussed in Part III *infra*.

Second, even as to the older housing programs under which subsidized housing is provided by the joint action of HUD and local housing agencies, nothing prevents the operation of a remedy which would deal with the manner in which HUD exercises its funding and administrative powers regardless of whether the remedy extends directly to the local recipient of the federal funds. It is commonplace in federally funded programs that requirements arising out of federal law, frequently anti-discrimination law, apply directly and independently to the federal funding agency. See, e.g., *NAACP, Western Region* v. *Brennan,* 360 F.Supp.1006, 1019 (D.D.C. 1973). ("If . . . [the Federal] Defendants have an obligation to fulfill under the Fifth Amendment and other statutes and regulations . . . [h]olding Defendants to that obligation does not prejudice the States or require their presence before the Court . . .")

The only other Government argument that relates, even indirectly, to HUD's use of the housing market area is the Government's assertion that metropolitan relief would breach the principle of tailoring a remedy to the nature and extent of the violation. (Br. 13.) In this connection the Government points out that the complaint in this case charged HUD with discrimination only in Chicago, not in suburban areas (Br. 13), asserts that from its inception this litigation has focused exclusively upon discrimination within Chicago (Br. 20), and quotes statements of the district judge to similar effect. (Br. 10, 22.)

We show in Part II, in relation to our separate argument that this case includes evidence of *de jure* suburban discrimination by HUD, that under Federal Rule 15(b) and decided cases the complaint here is to be treated as if it has been amended to raise the issue of suburban

discrimination by HUD, and that contrary to the statements of the Government and the district judge the issue of metropolitan relief against HUD has been a central and thoroughly litigated issue from the moment proceedings against HUD resumed in 1969 following entry of the remedial order against CHA.

However, quite aside from the evidence discussed in Part II, the "tailoring" principle would not be breached by housing market area relief against HUD in this case. Although HUD's Chicago discrimination of course occurred within Chicago, it also occurred within the Chicago Housing Market Area. In programmatic terms (as well as in "real world" terms of commuting patterns, economic and social inter-relationships, and market competition among dwelling units) we have it from HUD itself that the market area is the relevant area with respect to the problem of dealing with discrimination of the sort that occurred here—denial of minority housing opportunities outside areas of minority concentration. A market area remedy in this case *would* therefore be a remedy tailored to the violation that occurred in this case. (The principle, after all, speaks of the "nature and extent," not the "place," of the violation.)

Moreover, it is the office of equity to remedy the effects of violations whatever the precise nature of the conduct that caused the effects. (A large scale violation might have narrow effects; a limited violation might produce broad consequences.) This is nowhere better illustrated than by this Court's decision in *Louisiana* v. *United States, supra.* There the "nature" of the violation was the discriminatory use of a particular voting test while the effects of the violation were to disenfranchise a large class of persons. A second and different voting test was "never challenged in the complaint or any other

pleading," and there was no finding of discrimination respecting it. (380 U.S. at 154.) Yet to remedy the effects of a violation relating solely to the use of the first test, this Court upheld an injunction against the use of the second. (*Id.* 154-55.) It did so not because it ignored the principle that the remedy must be tailored to the violation but because it properly treated that principle as referring to the consequences caused by the violation and the action necessary to remedy them effectively. So it is here. If the effects of HUD's violation are such—as the court of appeals has found and HUD virtually acknowledges—that they can be effectively remedied only if HUD is directed to utilize its powers in the housing market area to that end, then *Louisiana* shows that equity may require HUD to do so. The least plaintiffs should be entitled to from HUD is that HUD should employ its funding and administrative powers to try to provide them with an effective remedy for the wrongs that have been done them within the area HUD itself says is the relevant area to be used in "decreasing the effects of past housing discrimination." 37 Fed. Reg. 203.

HUD is thus (1) an independently liable party, (2) exercising powers independent of local housing agencies, and (3) possessing jurisdiction and exercising funding and administrative powers over a metropolitan housing market area it has itself determined to be the proper geographic area respecting the very deconcentration issue presented by this case. Relief as to HUD's powers extending to that area is therefore neither "inter-district" under *Milliken* nor broader than the area the defendant has itself determined to be the appropriate area for dealing with the remedial issue presented by this case.*

* In a school desegregation case where school buildings are already located in both white and black neigborhoods,

II. Housing Market Area Relief Against HUD is also Proper under Milliken because There is Evidence Here Both of Discrimination by HUD in Suburban Areas and of the Impact of HUD's Discrimination Across City-Suburban Lines.

This case also differs from *Milliken* in another and separate respect that should be controlling. In *Milliken* there was "no evidence hinting" of anything but unitary systems in the suburban areas (418 U.S. at 748-49), and "no evidence of any inter-district violation or effect . . ." (418 U.S. at 745.) In this case "there is evidence of suburban discrimination" (503 F.2d at 937), as well as evidence that the effects of HUD's discrimination, both within and without the central city, spread beyond the local political jurisdiction within which it occured.*

* (Continued)

desegregation is possible by such means as adjustment of boundary lines, pairing of schools, transportation arrangements, and the like. In a housing desegregation case where the discrimination has consisted of placing housing exclusively, or nearly so, in black neighborhoods, no analogous desegregation tools are available. The only way to remedy the discriminatory effects of the past is to require that future subsidized housing be so located as to afford the choice of white as well as black neighborhoods that had previously been denied. Appendix A to this brief lists several possible forms of metropolitan relief, some limited to HUD and some extending to local housing agencies. The extension of metropolitan relief to local housing agencies is discussed in Part III below.

* The Government says it is arguable whether *Milliken* requires both an inter-school district violation and an inter-school district effect, or only one or the other, before inter-school district relief may be granted. (Br. 19.) As discussed in Part I above, this is not an "inter-district" case at all as regards relief against HUD, and the question posed by the Government need not be faced for that reason. But even if the case were to be so re-

Over the last twenty years a total of thirteen federally subsidized housing projects have been developed by HUD and local housing authorities under the United States Housing Act of 1937 within the suburban portion of the Chicago Urbanized Area.* Of the dozen projects for

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* (Continued)

garded—improperly, we think—the discussion in this Part II shows that both factors are present here.

* An "urbanized area" consists of a central city and "surrounding closely settled territory" as defined by the Census Bureau (Bureau of the Census, *1970 Census of Population, General Population Characteristics, Illinois,* PC (1)-B15 Ill. (October 1971), Appendix A, pp. 3-4), and therefore encompasses the most densely populated portion of the housing market area surrounding a central city, essentially excluding rural and non-contiguous portions. The Government says that because respondents suggested a form of metropolitan relief covering the Chicago Urbanized Area there is confusion over the geographic scope of metropolitan relief. (Br. 35, n.29.) For the reasons given in Part I above the housing market area is the appropriate geographic area to be considered in formulating a remedial decree. That does not mean or require that the district court *must* include the entirety of the housing market area in the final form of remedial decree. For example, subject to the necessity that the remedial area be large enough to afford effective relief (which, as the uncontradicted evidence shows, in this case requires the inclusion of areas outside of Chicago), HUD's established criteria might well lead the district court to exclude rural areas that may lack adequate services and facilities.

In this connection the strident amicus curiae brief of the City of Joliet reads as if HUD's project selection criteria and housing assistance program regulations would not govern HUD's exercise of its powers and screen out inappropriate locations for subsidized housing. And quite apart from HUD's own evaluation processes, the Joliet Housing Authority—which is of course to be sharply distinquished from the City of Joliet—would have full procedural and substantive rights to participate in the shaping of a remedial decree. See the discussion in Part III.

which the record contains location data ten are in (or, in one case in which census tract boundaries were changed, adjacent to) overwhelmingly black census tracts, while the other two are so close to such tracts that one is within and the other just outside the black residential type of area defined as the "limited" housing area by the district court. The result is that occupancy of all but one of the dozen projects is virtually all black. (Plaintiffs' Exhibit 11.)*

The full extent of this suburban discriminatory pattern is revealed only by comparing the project locations shown on Exhibit 11 with racial residential patterns in the entire Chicago Urbanized Area. Appendix B to this brief, a map of the urbanized area, depicts its "limited" housing areas and the locations within the urbanized area of the federally subsidized housing projects shown on plaintiffs' Exhibit 11. It is obvious that the overwhelmingly white suburban portion of the Chicago Urbanized Area** con-

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* The limited housing area is defined as that part of Cook County within census tracts having 30% of more nonwhite population or within one mile of such tracts. (304 F. Supp. at 737.) The record contains no location data as to the thirteenth project, a leased housing program of 95 apartments in Evanston, or respecting projects in the metropolitan area outside the urbanized area. However, the greater part of Evanston is within the limited housing area. Bureau of the Census, *1970 Census of Population and Housing, Census Tracts, Chicago, Ill. Standard Metropolitan Statistical Area, Part 1,* PHC(1)-43, P-68, P-69 and Inset A.

** According to the 1970 census the population of the Chicago Urbanized Area (exclusive of Chicago and Indiana) is almost 96% white and less than 4% black. Of a total population of 2,818,199, the white population was 2,700,562, the black population 101,935, and the population of other races 15,702. Bureau of the Census, *1970 Census of Population, General Population Characteristics, Illinois,* PC(1)-B15 Ill. (October 1971), p. 105.

tains several small black residential areas, and that with near-perfect accuracy over a period of more than two decades (the only possible exception being 95 leased apartments in Evanston whose locations are not disclosed in the record) all federally subsidized housing projects within the urbanized area have been placed in or at the edge of the black residential areas. Paraphrasing what the trial judge said in the first instance respecting CHA's liability (296 F. Supp. at 913), in the face of these figures HUD's failure to present a substantial or even speculative indication that impermissible racial criteria were not used in locating these projects supports the determination of the court of appeals that HUD's discriminatory conduct extended to the suburban portion of the housing market area. *Jones* v. *Georgia,* 389 U.S. 24 (1967) (finding of *de jure* discrimination based entirely on jury selection statistics and absence of explanation); *Hernandez* v. *Texas,* 347 U.S. 475 (1954) (same). Even apart from such cases as *Jones* and *Hernandez,* under *Keyes* v. *School District No. 1, supra,* 413 U.S. at 208-09, the adjudication of HUD's *de jure* discrimination in the Chicago portion of the housing market area creates a presumption, here unrebutted, that the segregated suburban pattern is not adventitious.

While contending that the facts do not support a finding of discrimination by HUD in the suburban areas, HUD argues that even if they could be viewed as "probative" (Br. 24) the allegations of the complaint and statements of the district judge show that from its inception this litigation has focused exclusively upon discrimination within Chicago, a focus the court of appeals is said to have improperly shifted to the metropolitan area. (Br. 20, 25.)

In fact plaintiffs' Exhibit 11 was offered to show that the racial segregation pattern of subsidized housing in

the city was duplicated in the suburban area (Transcript of Proceedings, November 27-28, 1972, pp. 76, 210), and Exhibit 11 together with other evidence to be discussed below *(Id.,* pp. 130-131, 134, 141-49) was offered to show "that HUD has helped to create this pattern of the black city and the white suburb" *(Id.,* p. 77), and "had helped to produce the segregated situation not only within the cities and within the suburbs, but city against suburb that constitute a part of the problem of relief in the case." *(Id.,* p. 139.) Though HUD objected to the offer of Exhibit 11, following the admission of the exhibit HUD did not adduce evidence to the contrary but chose to limit its case to the paucity of housing subsidy funds then said to be available. *(Id.,* Nov. 29, 1972, pp. 330-48.) Thus, under Federal Rule 15(b), the complaint is to be treated as if it had been amended to raise the issue of discrimination by HUD in the suburbs. *Purofied Down Products Corp.* v. *Travelers Fire Insurance Company,* 278 F. 2d 439, 444 (CA 2, 1960); *Decker* v. *Korth,* 219 F. 2d 732, 739 (CA 10, 1955).

Moreover, the question of metropolitan relief against HUD has been in the case against HUD from the time that case became active, and HUD itself has offered evidence and the district court has called for remedial proposals on that subject. Apart from the prayer of the complaint for "other and further" relief, plaintiffs' original motion for summary judgment against HUD sought housing market area relief. (Pet. App. 15a.) HUD responded with a lengthy affiidavit and documentary evidence describing its activities in the housing market area outside Chicago. (Affidavit of Don Morrow, Record Item 52, Appeal No. 71-1073.)* Upon remand (following re-

* HUD did not contend that the question of such relief was outside the issues in the case; to the contrary, it argued

versal of its dismissal of the complaint against HUD) the district court itself requested the submission of remedial proposals "not confined in their scope to the geographic boundary of the City of Chicago." (App. 50.) Thereafter HUD joined respondents in representing to the district judge that metropolitan relief was desirable, that HUD would be willing to participate in the development of a metropolitan remedy responsive to the Court's request if state and local governments "took the lead," and that HUD "endorse[d] the concept" of metropolitan approaches to the housing problem. (Transcript of Proceedings, February 22, 1972, pp. 4-7, App. 62-64.) Although its own remedial proposal did not include metropolitan relief (other than cooperation respecting the optional Cook County part of the 1969 order against CHA), the document HUD called its "best thinking" did include significant metropolitan-wide housing activities to be undertaken both by CHA and itself. (Plaintiffs' Exhibit 18, e.g., pp. 5, 7, 8, 10, to Hearing of November 27-29, 1972, App. 152-54.)

Thus, as the court of appeals recognized, it is not correct to say that the litigation has focused exclusively upon discrimination within Chicago, or that the question of metropolitan relief goes beyond the issues in the case; the contrary statements of the Government and the district judge overlook the portions of the record just referred to which show not only that "the possibility of metropolitan relief has been under consideration for a long

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that such relief was unnecessary because of the voluntary remedial steps it was already taking in the metropolitan area. (HUD Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, p. 22, Record Item 52, Appeal No. 71-1073.)

time in this case," 503 F. 2d at 937, but that HUD has actively participated in that consideration, offered evidence respecting it and joined in a specific representation to the district judge concerning its desirability.

In addition it is established that courts apply the law in effect at the time of the rendering of judgment, not the filing of the complaint, *Thorpe* v. *Housing Authority of Durham, supra,* 393 U.S. at 281-83, and that equity will similarly deal with the conditions that exist at the time of the entry of a decree. *Green* v. *School Board of New Kent County,* 391 U.S. 430 (1968). HUD's basic obligations when the complaint was filed in 1966 under the Fifth Amendment and the essentially prohibitory 1964 Civil Rights Act were reinforced and elaborated by the passage of the 1968 Civil Rights Act to include *affirmative* administration of all of HUD's housing programs to achieve fair housing objectives. *Shannon* v. *Department of Housing and Urban Development, supra,* 436 F. 2d at 820.• Subsequently, as evidenced by the Project Selection Criteria and the housing assistance program regulations, HUD recognized that its 1968 Act obligations included dealing with the problem of minority concentration on a housing market area basis. That is the situation that obtained when the issue of the proper scope of relief against HUD was finally presented to the district court on remand. No authority requires that plaintiffs be denied the benefits of a remedial approach based upon HUD's

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• "This affirmative action provision [of the 1968 Civil Rights Act] reinforced the provisions of Title VI of the 1964 Civil Rights Act prohibiting discriminatory actions by the Federal Government." *(Housing in the Seventies,* Report of the Department of Housing and Urban Development, Hearings before the Subcommittee on Housing of the Committee on Banking and Currency, 93rd Cong. 1st Sess., Part 3, p. 2017.)

extant affirmative duties because their complaint, filed earlier, had not anticipated the later passage of a new law and HUD's promulgation of regulations under it.

In addition to the evidence of HUD's suburban discrimination the record shows that segregated housing patterns within the central city and the surrounding suburban community are intimately related, historically (Transcript of Proceedings, November 28, 1972, pp. 156-60), as well as currently *(Id.,* November 27, 1972, pp. 92-93), and that the impact or effect of housing segregation in either place spreads throughout the market area. The Government describes the court of appeals' conclusion respecting the extra-city impact of segregation within the city as "conjecture." (Br. 26.)• Yet the record contains HUD's express admission of that fact:

> "[T]he impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding community." (Statement of George Romney, Appendix A, pp. 15-16, to HUD's Memorandum, Record Doc. 283.)

That impact is of course quite understandable given the fact that within the housing market area dwelling units are in competition with one another, or, as HUD has elsewhere put it, that "the city and its surrounding area

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• HUD now conjectures that segregation in the central city might not induce "white flight" but rather have the effect of stemming it. (Br. 27-28.) This is inconsistent with its own stated position, not advanced for litigation purposes: "When such concentrations [of large numbers of federally subsidized housing units] have occurred in central cities, they have contributed to the physical and social deterioration of the city, and have hastened the exodus from the cities of the more stable elements of society." (Testimony of George Romney, quoted in *Implementation of HUD Project Selection Criteria for Subsidized Housing: An Evaluation, supra,* p. 7.)

comprise a single 'locality' for low-rent housing purposes." (Plaintiffs' Exhibit 13, pp. 304.)

Moreover, since federally subsidized housing was located almost exclusively in black areas in the Chicago Housing Market Area, both within the central city and without it, all who wished to live in federally subsidized housing in the Chicago metropolitan area had no choice other than to live in such black neighborhoods. The confinement of federally subsidized housing projects in the suburbs to black residential areas thus shut off opportunities that would otherwise have existed within the market area for persons in the central city to exercise housing choice. Under even the most stringent reading of *Milliken* the evidence in this case thus shows "inter-district" effects from HUD's discrimination—suburban effects from the discrimination in the city and city effects from the discrimination outside it.•

• *City of Black Jack* v. *United States,* No. 74-1293, cert denied —— U.S. ——, 43 U.S.L.W. 3671 (1975), involved a suburban housing project in Black Jack, Missouri intended to provide housing opportunities for families residing in the ghetto areas of the City of St. Louis. (Brief for the United States in Opposition, p. 2.) The Government instituted the action alleging, among other things, that the effect of a Black Jack zoning ordinance had been to deny housing within Black Jack to low-and middle-income black residents "of the St. Louis metropolitan area," *(Id.* p. 3), and *stipulated* that "segregated housing *in the St. Louis metropolitan area* was 'in large measure the result of deliberate racial discrimination *in the housing market* by the real estate industry and by agencies of the *federal,* state, and local governments . . .'." ((*Id.* p. 5, emphasis supplied.)

The author of the following passage was HUD's General Counsel at the time of writing.

> "A large portion of the center city populace are members of minority groups while the suburbs remain predominantly white. Every additional low-

There is a suggestion in Mr. Justice Stewart's opinion in *Milliken* that residential patterns may be caused by "unknown and perhaps unknowable factors . . ." (418 U.S. at 756.) HUD, however, acknowledges that at least one known factor is the significant contribution of the Federal Government to the creation of segregated housing patterns. In Congressional hearings in 1970 the following colloquy took place between then HUD Secretary George Romney and Senator Walter Mondale:

> "Secretary Romney: . . . I would now like to turn to . . . 'the question of whether or not the Federal Government—through past or present policies—has contributed to the creation of segregated housing patterns.' The answer, of course, is 'Yes.' . . .
>
> Senator Mondale: It is correct that although most housing was developed without Federal assistance, the Federal leadership role, to which you make reference, during this period was one which legitimized racial covenants and lily white suburbs?
>
> Secretary Romney: There isn't any question about that . . .
>
> Senator Mondale: . . . [W]e had an official policy encouraging Americans to live separately.
>
> Secretary Romney: That is right.
>
> Senator Mondale: So I agree with you that while the sole villain was not the Federal Government, sometimes we forget or choose to ignore the degree to which the Federal Government was implicated not too long ago.

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> income project HUD approves for financial assistance in central cities inevitably reinforces segregated housing patterns. Conversely, projects outside central cities potentially break down segregation. Projects in both sections are needed to provide decent housing for the poor." *(HUD's Project Selection Criteria—A Cure for "Impermissible Color Blindness"?* David O. Maxwell, 48 Notre Dame Lawyer 92 (1972).)

> Secretary Romney: That is right . . . [T]he dominant majority supported or condoned social and institutional separation of the races. This attitude became fixed in public law and public policy . . . and thus it was adopted as a matter of course by the Federal Government when it entered the housing field in the 1930's. It continued after World War II. . . . FHA's policies [FHA is a constituent division of HUD] have changed, of course. . . . But changes in FHA policies have thus far had little practical effect on the pattern of residential segregation which has come to characterize our great metropolitan areas. . . ." (Hearings before the Senate Select Committee on Equal Education Opportunity, 91st Cong. 2d Sess., 1970, pp. 2754-56.)

The United States Commission on Civil Rights has expressed the view that HUD's contribution to today's segregated housing patterns has been determinative.

> "The segregated housing patterns that exist today are due in large part to racially discriminatory FHA policies in effect during the post World War II housing boom. FHA and VA together have financed more than $117 billion-worth of new housing since World War II. Less than two percent of it has been available to non-white families, and much of that on a strictly segregated basis." Report of the United States Commission on Civil Rights, *A Time to Listen . . . A Time to Act*, G.P.O., Washington, D.C. (1967), p. 126.•

• The Report of a Presidential Commission states, "It may fairly be charged that in line with the prevailing general attitude, Federal funds were so used for several decades [following World War II] that their effects were to intensify racial and economic stratification of America's urban areas." (*Building the American City*, Report of the National Commission on Urban Problems, G.P.O., Washington, D.C., House Document No. 91-34, p.12.)

Although, as Secretary Romney pointed out, even in

But whatever the degree of Federal Government culpability for the racially segregated residential patterns within communities and as between cities and suburbs *generally,* the degree of that culpability with respect to the *federally subsidized portion of the housing market* that is at issue in this case cannot be doubted. As to federally subsidized housing there is no question, particularly when its actions are viewed in "historical context," *United Farmworkers* v. *City of Delray Beach,* 493 F.2d 799, 810 (CA 5, 1974), that HUD has discriminated throughout the Chicago Housing Market Area, that its discrimination is significantly responsible for the segregated conditions that today exist in federally subsidized housing throughout the market area, and that the discrimination in any part of the area affects those who are

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the peak years of federal housing activities two out of three homes built in the United States were financed without federal involvement (Senate Select Committee Hearings, *supra,* p.2754), the private lending institutions that financed the "non-federal" homes were supervised by federal agencies that had themselves adopted discriminatory policies. See Hearing Before the United States Commission on Civil Rights, June 14-17, 1971, Federal Policy and Equal Housing Opportunity, by Martin E. Sloane, G.P.O., Washington, D.C., pp. 735, 738-39. FHA discriminatory policies were also said to have a strong influence on the housing industry. "FHA was looked to for leadership by members of the private housing and home finance industry, and many of its policies were adopted by that industry . . . Its policy on housing discrimination and segregation also was a strong influence on industry. One observer characterized this policy as 'separate for whites and nothing for blacks.'" (*Id.* at 734-35.) Like testimony was offered in this case. (Transcript of Proceedings, November 28, 1972, pp. 121-87, esp. 146.)

eligible for such housing who live anywhere within the area.•

Thus, even if housing market area relief against HUD were to be viewed—improperly, we think—as "inter-district" in the sense in which that term is used in *Milliken,* the evidence in this case of suburban discrimination by HUD, and of the impact of HUD's city and suburban discrimination across city-suburban lines, would justify housing market area relief against HUD.

III. Because Milliken Dealt with Questions of Equitable Remedies, not Substantive Constitutional Law, and Equitable Factors Decisive Against Metropolitan Relief in That Case are Absent Here, Milliken Does Not Foreclose Housing Market Area Relief Against HUD Apart from the Reasons given in I and II. In Addition, Housing Market Area Relief Against HUD in This Case is Practical, Judicially Manageable, Consistent with Congressional Policy and Necessitated by Traditional Equitable Considerations.

Accepting for purposes of argument the Government's view that *Milliken* stands as an impassable obstacle to inter-school district remedies in every case that does not involve inter-school district segregative acts or effects, we have shown in Parts I and II that for two separate reasons housing market area relief against HUD is not inconsistent with such an interpretation of *Milliken.* However, we do not believe that the Government's view of *Milliken* is correct. We think *Milliken* is properly to be understood as growing out of equitable factors,

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• As one observer put it,
"The wall of white hostility forced Negroes into ghettos. Negro public housing followed them into the ghettos. There it has essentially remained." Lawrence M. Friedman, *Government and Slum Housing,* (Rand McNally 1968), p.123.

particularly relating to judicial manageability, present in that case. Upon such a reading of the *Milliken* opinion we show in this Part III that, the circumstances here being markedly different, housing market area relief against HUD is appropriate and not foreclosed by *Milliken* apart from the reasons already given in Parts I and II.

Milliken dealt with questions of equitable remedies, not substantive constitutional law. As Mr. Justice Stewart stated:

> "[T]he Court does not deal with questions of substantive constitutional law. The basic issue now before the Court concerns, rather, the appropriate exercise of federal equity jurisdiction." 418 U.S. at 753.

The general statements quoted by the Government as constituting the "holding" of *Milliken* are therefore to be understood in relation to the facts, particularly the equitable considerations, presented by that case.*

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* "It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." *Cohens* v. *Virginia,* 19 U.S. 264, 399-400 (1821). (Opinion of Mr. Chief Justice Marshall.)

"In equity, as nowhere else, courts eschew rigid absolutes and look to the practical realities and necessities inescapably involved in reconciling competing

Milliken addressed a proposal to set aside the boundaries of substantially autonomous local school districts. A significant sentence in the opinion written by Mr. Chief Justice Burger begins, "Before the boundaries of separate and autonomous school districts may be set aside . . ." (418 U.S. at 744.) Four equitable considerations of practicality and judicial manageability growing out of that circumstance loomed large in the Court's opinion: (1) the "deeply rooted" tradition of local control over schools; (2) the "logistical and other serious problems attending large-scale transportation of students"; (3) the "array of other problems in financing and operating this new [consolidated] school system"; and (4) the likelihood that the contemplated inter-school district remedy would require a "complete restructuring of the laws of Michigan relating to school districts" and could "disrupt and alter the structure of public education in Michigan." (418 U.S. at 741-43.) The fear was expressed that these considerations would inevitably lead to the district court becoming "first, a *de facto* 'legislative authority' to resolve these complex questions, and then the 'school superintendent' for the entire area." (418 U.S. at 743-44.) It is hardly likely that these factors would have been so emphasized if the Court had intended to announce a rule which, regardless of their presence or absence, would foreclose inter-school district remedies in every situation in which inter-school district acts or effects were lacking.

In this case the circumstances are entirely different and any similar concern about the remedial role of the

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interests, notwithstanding those interests have constitutional roots." *Lemon* v. *Kurtzman,* 411 U.S. 192, 201 (1973). (Opinion of Mr. Chief Justice Burger.)

district court under a housing market area order against HUD is wholly unjustified. The point may be illustrated by reference to the existing remedial orders relating to Chicago. Those orders essentially direct HUD to permit federal funds to be used for new subsidized housing in the City only if (a) the housing meets locational criteria, that is, is predominantly located in white neighborhoods, and (b) a specified proportion of it is made available to the plaintiff class. (304 F.Supp. 736; 363 F.Supp. 690.) Though little remedial housing has yet been provided, HUD has attributed the delay to "normal bureaucratic procedures," not to any impracticality of the orders. (384 F.Supp. at 38.)*

Moreover, remedial efforts thus far do not include HUD's exercise of its direct powers under the 1974 Act. HUD has only just begun to take steps to provide remedial housing under that Act, the order covering the new provisions not having been entered until May, 1975. (App. 221.) Significantly, HUD did not object on practicality or other grounds to the entry of that order, which contains location and availability criteria similar to those in the previous remedial orders covering the older programs.

Yet one option available to the district judge on remand is to frame a housing market area remedial order directed to HUD on the same principle as the extant city orders. Just as the two criteria of location outside areas of black concentration and availability to the plaintiff class have been "added" to HUD's other criteria as conditions for the use of federal housing funds in Chi-

* However, it is clear that the reasons for the delay also include the lack of sufficient suitable land remaining in the general public housing or predominantly white areas of the City. See the discussion in the text, *infra*.

cago, so they could be added as conditions for the use of federal housing subsidy funds in the suburban portion of the housing market area. (See Appendix A to this brief.) So framed, such an order would present no greater or different problems of practicality or judicial manageability than the city orders. Federal housing programs operate identically in the suburbs as in the city; in both places HUD receives proposals from housing developers, public and private, which it then evaluates on the basis of its various criteria. Nor would such an order set aside the boundaries of autonomous local agencies—indeed, no boundaries at all would be set aside. Obviously, too, no traditions of local control would be interfered with, no transportation of persons would be ordered or required and no consolidation of local governmental units or restructuring of local laws would be entailed. In short, factors such as those which led to the concern in *Milliken* that the district court would become the "school superintendent" for the entire area would be wholly absent.

Two additional major differences between housing market area relief against HUD in this case and the consolidation of local school districts proposed in *Milliken* merit emphasis. The first has to do with the element of coercion or compulsion. In *Milliken* it was clear that not only the Detroit School Board and the State of Michigan but large numbers of innocent suburban school districts as well were to be subject to the proposed order. A major impact of any remedial order would thus fall on innocent governmental bodies.* Further, the order against the

* *Milliken* dealt not simply with a remedy that was "areawide" in geographical terms but with a "*multi-district*, areawide remedy" (418 U.S. at 721, emphasis supplied), which mandated the involvement in the remedial plan of the "included school districts" (*Ibid*).

innocent districts would have been coercive in that the districts would have been required to abandon existing administrative and financial arrangements and enter into new ones. Finally, the impact of such an order would have fallen coercively upon individuals: suburban school children would have been *assigned* to particular schools as a result of the court decree.

Here, by contrast, notwithstanding the Government's inaccurate assertion that "coerced consolidation" or participation of innocent local governments would necessarily be involved in any form of metropolitan relief (Br. 36), a housing market wide remedial order confined to HUD would run only against a "guilty" party. No innocent governmental entities or private persons would be subject to it. Innocent suburban housing authorities would not be ordered, or asked, to do anything. Innocent residents of suburban localities would not be ordered to move to the central city or elsewhere; they too would not be ordered, or asked, to do anything. (Nor would plaintiffs and the members of the class they represent be coerced in any way. Rather, they would be given the opportunity to choose to live in suburban housing if they so desired, an opportunity they would be free to accept or reject.) Thus, the element of coercion and impact upon innocent governmental bodies and persons necessarily involved in the proposed metropolitan order in *Milliken* would be wholly lacking in a housing market area order against HUD.

The second additional major difference between housing market area relief against HUD in this case and the proposed remedial order in *Milliken* has to do with "racial balance." It seemed clear to this Court in *Milliken* that the lower courts there had held the view "that total desegregation of Detroit would not produce the racial balance which they perceived as desirable" (418 U.S. at

740), and that the metropolitan area had been selected as the geographic remedial area only for that reason. (Id. at 739-40.) Mr. Chief Justice Burger's opinion said that the lower courts had assumed that Detroit schools could not be truly desegregated unless the racial composition of the student body "of each school" substantially reflected the racial composition of the population of the metropolitan area as a whole, and the opinion quoted the district court's view that desegregation required that "no school, grade or classroom" be substantially disproportionate to overall pupil racial composition. (*Ibid.*)

In this case no such view has been expressed or employed concerning racial balance or—the analogy here to the racial composition of student bodies—the racial composition of housing projects. The remedy called for here, the provision of remedial housing, is most nearly analogous to the building of new schools. This Court has held that it is an appropriate element of a school desegregation decree to see to it that future school buildings are so located that they do not perpetuate segregation. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 20-21 (1971). Here, where the focus of a plan to provide remedial housing is likely to be upon just such future location criteria, the Court is not presented with a situation at all comparable to one involving a decree that seeks to provide a particular racial mix in all schools, grades or classrooms.

In addition, nothing like busing or the pairing of schools—techniques that mandate an involuntary rearrangement of existing pupil travel patterns—is involved. As already noted, remedial housing will be occupied by those, and only those, who voluntarily apply for it. The racial mix that will result from such exercises of in-

dividual choice is not known in advance. Neither is it prescribed in any way. Most importantly, the housing market area has been selected as the proper remedial area not because using it will produce a racial balance deemed desirable by anyone but because, being the "market" area, using it will provide as effectively as possible the housing *choice* (i.e., to live in either white or black neighborhoods rather than to be officially confined to the latter alone) the denial of which constituted the constitutional and statutory violation which must be remedied in this case.*

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* Thus the Government's assertion (Br. 25) that the court of appeals in this case shifted the focus to metropolitan relief to produce a racial balance it perceived as desirable is wholly unjustified (even apart from the fact, noted in Part II above, that with respect to HUD the focus had been on metropolitan relief from the filing of plaintiffs' motion for summary judgment in 1969 and that there was therefore no "shift").

In this connection the Government says that the Constitution requires "racially neutral operation of each politically separate system." (Br. 25). This formulation is perhaps unobjectionable once the effects of a constitutional or statutory violation have been effectively remedied (see *Swann* v. *Board of Education,* 402 U.S. 1, 31-32 (1971)), and, further, if it is understood to apply to the federal government, in this case HUD, as well as to state and local governments, and not to be inclusive of statutory obligations such as the "affirmative administration" mandate delivered to HUD by the 1968 Civil Rights Act, 42 U.S.C. §3608(d)(5). However, as stated by the Government, the formulation omits entirely any reference to the remedial duty "so far as possible [to] eliminate the discriminatory effects of the past," *Louisiana* v. *United States, supra,* 380 U.S. at 154, a duty quite distinct from the separate obligation the Government's statement does recognize to "bar like discrimination in the future." *Ibid.* It is of course the former duty to which this case is now addressed.

Nonetheless, in Section C of its brief (pp. 28-40) the Government advances four "practical considerations" said to militate against metropolitan relief in this case. They relate to local control over land use, the statutory scheme for federally subsidized housing, costs and burdens that allegedly flow from such housing, and the allocation of remedial housing among different groups of eligible persons. In the balance of this Part III we show that these arguments are without substance and that housing market area relief against HUD is practical, judicially manageable, consistent with Congressional policy and necessitated by traditional equitable principles.

Local Control Over Land Use. The first of the supposed practical difficulties which a housing market area order would encounter is an asserted conflict with the tradition of local control over land usage (of which, however, the Government acknowledges subsidized housing forms but a "small part"). (Br. 29.) However, local control over land usage is not involved here in any way. Subsidized housing must conform as much as private housing to local land use controls, such as zoning. No remedial order in this case, and none that has been suggested, whether intra-city or metropolitan, would impinge upon local control over land use; it is misleading to imply the contrary.

> "Sites for HUD-assisted housing must be selected and acquired by local sponsors—public or private—and housing developed on those sites must conform to local building codes." (Statement of President Nixon, quoted in Appendix A, p. 13, to HUD's Memorandum, Record Doc. 283.)*

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* Of course, if the zoning power or other land use controls are employed in a racially discriminatory manner, courts will give relief. See, e.g., *Kennedy Park Homes*

The Statutory Scheme. Second, the Government argues that the federal statutory scheme reserves to the local community the decision whether to participate in federally subsidized housing programs, and implies that a metropolitan remedial order would conflict with that scheme. (Br. 29-34.) The argument is factually incorrect as regards the housing asistance programs created by the 1974 Act, and it affords no reason for denying metropolitan relief even as to the older, pre-1974 housing programs.

The factual error arises from the Government's repeated but erroneous assertion that it is "communities" or "municipalities"—i.e., units of general local government—that participate in and provide subsidized housing under federal housing programs. Thus, the Government asserts that nothing in the federal statutes requires any "community" to participate in federal housing programs (Br. 29), and says that the decision whether or not to participate is explicitly or as a practical matter "reserved to the local government." (Br. 31.) The very caption of this portion of the Government's brief proclaims that the statutory scheme reserves that decision to the "local community." (Br. 29.) At only one point, terming it "one minor exception" (Br. 30), does the Government acknowledge that this is not the statutory scheme at all under the Housing and Community Development Act of

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Ass'n. v. *City of Lackawanna*, 436 F.2d 108 (CA 2, 1970), cert. denied 401 U.S. 1010 (1971); *United Farmworkers* v. *City of Delray Beach*, 493 F.2d 799 (CA 5, 1974); *United States* v. *City of Black Jack*, 508 F.2d 1179 (CA 8, 1974), cert. denied —— U.S. ——, 43 U.S.L.W. 3671 (1975); *Gautreaux* v. *Chicago Housing Authority*, 480 F.2d 210, cert. denied, 414 U.S. 1144.

1974. And even this acknowledgment that "local governmental approval is no longer explicitly required as a condition of the program's applicability to a locality" (Br. 33-34) is coupled with the assertion that local governmental bodies must nonetheless be "substantially involved." (Br. 34.)

The 1974 Act in fact eliminates local governmental approval as a requirement for federally subsidized housing provided under the programs established by the Act. It gives to HUD, not to units of general local government such as city councils or village boards, the power to contract with private developers for new and substantially rehabilitated housing. 42 U.S.C. §1437f(b)(2). It similarly gives to HUD, not to such units of local government, the power to administer the existing housing program (in buildings neither newly constructed nor substantially rehabilitated) wherever local housing agencies are not organized or are unable or unwilling to do so. 42 U.S.C. §1437f(b)(1). In neither case is the decision to participate "reserved" to local governments.

Neither is the local government "substantially involved." The Government's brief says that in the former case—HUD contracting directly with a private developer—the local government is substantially involved because the private developer requires zoning approval and municipal services. (Br. 34; Reply Mem. 2, n.l.) We have already noted that federally subsidized housing must always conform to zoning and other land use controls in the same manner as non-subsidized housing. The possibility that a local government *might* deny a private developer zoning changes (a non-existent possibility if the land is already properly zoned) or municipal services (a non-existent possibility if the land already has them) is ob-

viously not a reason to deny plaintiffs relief as to *HUD's powers,* exercisable by HUD independently of local governments, to enter into contracts with private housing developers. This is likewise true with respect to HUD's power to administer an existing housing program in the absence or unwillingness of a local housing agency to do so, an authority possessed by HUD despite the Government's failure to refer to it in this connection. (In this context zoning is already proper and municipal services are already provided because the housing is already in place.)

The Government's mistaken view is also reflected in its erroneous description of the "block grant program" of the 1974 Act as one of three public housing programs to which this litigation is said principally to relate. (Br. 31, 32-33.) In fact, the so-called block grant program is not a housing program at all but a community development program which supersedes urban renewal, model cities and other former "categorical" development programs and is contained in an entirely separate title from the housing program created by the 1974 Act that *is* involved here. Thus, the block grant program, established by Title I (Community Development) of the 1974 Act, provides funds for a long list of activities, not including subsidized housing. Public Law No. 93-383, Title I, 88 Stat. 633-54, §§101-18, esp. §105. The subsidized housing program, established by Title II (Assisted Housing) of the 1974 Act, provides funds specifically and only for subsidized Housing. *Id.,* Title II, 88 Stat. 654-77, §§201-13, esp. §8 of §201(a). Local municipalities *do* apply for and are the recipients of Title I community development funds; the decision whether or not to participate in Title I activities is thus explicity reserved to the local government. *Id.,* 88 Stat. 634-40, §§103(a), 104(a).* Local municipalities do *not* apply for and are not recipients of Title II subsidized housing funds; the decision whether or not to participate in Title II activities is thus *not* reserved to them but is given over by statute to housing developers, private and public, and private landlords. *Id.,* 88 Stat. 662-67, §8 of §201(a).

Thus the Government's discussion of the "one minor exception" is simply incorrect. Under the 1974 Act subsidized housing programs operate independently of units of general local government such as city councils, village boards, and the like; local housing agencies may participate if they wish, but neither they nor local municipal governments can prevent HUD from deciding that the 1974 Act housing programs shall be permitted to operate within their jurisdictions.

Nor is this "minor" exception very minor. Indeed, HUD Secretary Hills has indicated that in the future HUD intends to rely principally upon the 1974 amendments in

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* As the Government points out, a Title I application includes a housing assistance plan, but the thrust of this requirement is the reverse of the implication in the Government's argument that the federal statutory scheme gives local governments the power to frustrate proposals for federally subsidized housing. The housing assistance plan puts local governments on record as acknowledging the need for low income housing, and the statute then authorizes HUD to approve subsidized housing proposals, even over local governmental objections, if the Secretary finds the proposals to be "consistent" with the plan. 42 U.S.C. §1439(a)(2). Where the local government has not applied for Title I community development funds HUD is empowered to proceed with subsidized housing subject only to its own determination that there is a need for the proposed housing and that adequate facilities and services are available. 42 U.S.C. §1439(c).

meeting the needs for federally subsidized housing. (Hearings, Subcommittee of the Committee on Appropriations, House of Representatives, 94th Cong. 1st Sess., Part 5, April 14, 1975, pp. 119-20.)

Even with respect to the pre-1974 housing programs, however, where as the Government correctly points out the statutory scheme effectively gives units of general local government a veto power over subsidized housing programs within their borders (by requiring a cooperation agreement for conventional and turnkey public housing, 42 U.S.C. §1415(7)(b), and an authorizing resolution for leased housing, 42 U.S.C. §1421b(a)(2)), that fact no more bars relief in the suburban portion of the market area than it did in Chicago. The City of Chicago, which has never been charged with or adjudicated liable for the HUD-CHA discrimination, retains the power to refuse to enter into cooperation agreements with CHA and to refuse to pass authorizing resolutions for leased housing respecting the pre-1974 housing programs. Yet it has never been suggested that on that account relief against HUD within the City of Chicago should not have been granted with respect to those programs. No more should such a possibility preclude relief against HUD elsewhere in the housing market area.

In sum, the contention that the statutory scheme creates a practical difficulty by reserving to local communities the decision whether to participate in federally subsidized housing programs is factually inaccurate as to all three forms of the housing assistance program (new construction, substantial rehabilitation and existing housing) which now constitute the major current federally subsidized housing activity, and—as the Chicago situation illustrates --affords no reason for denying metropolitan relief even as to the older programs.

It is, indeed, an aspect of HUD's own argument, not metropolitan relief, that runs counter to Congressional policy. The petition says that "uncertainty" caused by this case may discourage participation by suburban jurisdictions in federal programs. The "chilling effect" is ascribed to the fear that, because an implication of the decision below is that some federally assisted housing for central city residents may be located in suburban areas, suburbs may be deterred from participating in federal programs. (Petition 8-10.) The argument is repeated in somewhat attenuated form in the Government's brief on the merits. (Br. 30-31.) Apart from its inaccuracy,* the Government's argument conflicts with the policy of the 1974 Act favoring the dispersal of low-income housing outside central cities. The initial Congressional finding is that urban communities face critical problems in part because of "the concentration of persons of lower income in central cities." 42 U.S.C. §5301(a)(1). "[T]he spatial deconcentration of housing opportunities for persons of lower income . . ." is among the law's primary objectives. 42 U.S.C. §5301(c)(6).

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* Since housing funds are applied for and housing projects are operated by housing developers, public or private, the failure of a suburban community to apply for quite separate community development funds, 42 U.S.C. §5.01 et seq., would not preclude HUD from supplying funds to housing developers for federally subsidized housing designed to house central city residents in that community. In such a case the suburban community is entitled to furnish HUD with "comments or information," but the final determination as to whether housing is to be provided is to be made by HUD. 42 U.S.C. § 1439(c). It would be a mistaken suburban community that decided not to participate in the community development block grant program because it believed it might thereby prevent housing developers from providing federally supported housing within its borders.

Housing needs of lower-income persons are to include not only the needs of residents but of those "expected to reside" in the community as well. 42 U.S.C. §5304(a)(4)(A). Of this provision the key legislative committee report says:

> "The committee wishes to emphasize that the bill requires communities, in assessing their housing needs, to look beyond the needs of their residents to those who can be expected to reside in the community as well." (Report No. 93-1114, House of Representatives, 93d Cong. 2d Sess., p. 7.)

Elsewhere HUD has acknowledged this policy of the 1974 Act, as shown by the following quotations from a recent speech respecting the Act by HUD Secretary, Carla A. Hills:

> "The undue concentration of poor people in a central city may only be capable of mitigation on a region-wide basis."
>
> ". . . the Act itself embodies a concept of regionalism, necessitated by the modern realities of regional growth and development."
>
> "There will be communities which will strongly oppose efforts to place their interests in the larger mosaic of our metropolitan areas. Strong opposition will meet efforts to take away a town's enjoyment of the benefits of economic development without sharing its burden of housing the low-income families who are employed by its industries. But rational metropolitan development will be furthered, and I think eventually our efforts will be applauded." (HUD News, May 28, 1975, Remarks Prepared for Delivery by Carla A. Hills, pp. 2, 7.)

To the extent the decision below looks toward the provision of housing opportunities for low-income central city residents outside the central city, it is thus entirely consistent with the policy of the law.*

Costs and Burdens. The next practicality argument of the Government is that a metropolitan remedial order would subject suburban governments to substantial costs and burdens, all under judicial supervision, and that the number of governmental units thus subjected to judicial supervision would be so large as to render the task unmanageable. (Br. 35-37.) The short answer is that *no* suburban governmental units would be subjected to judicial supervision as a result of a metropolitan remedial order against HUD. No "equitable [or other form of] relief against them" would be involved. (Br. 35, n.30.) It bears repeating that the Government erects a straw man when it suggests that suburban governments would be parties to, or necessarily involved in, a metropolitan remedial decree against HUD. By contract with private developers, public developers (local housing authorities) or private landlords, HUD would carry out such a decree. No decree against suburban governmental units would be required any more than a decree against the City of Chicago was required as part of the remedial orders in Chicago.

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* The petition's argument would seem to translate as follows: If the ruling of the court of appeals stands, suburbs may get the impression that they may have to house some central city low-income people and this impression will deter them from allowing federally supported housing within their borders and from applying for community development block grants. Therefore the Court must dispel this erroneous impression so that community development grants and housing subsidies can flow to suburbs that house only their present residents. Compare this with the quotation from the President's Report on National Housing Goals, *supra*, p. 10.

Neither are the supposed costs and burdens of a remedial decree any more relevant as respects suburban governmental units than they were as to Chicago. No contention was (or justifiably could have been) advanced that intra-city relief was precluded by any costs or burdens that might fall upon the citizens of Chicago as a result of housing developers providing remedial housing within the city. Neither is such a contention sound as regards remedial housing provided elsewhere in the market area.

In fact, moreover, the supposed costs and burdens are largely imaginary. Under the 1974 Act housing assistance programs they are non-existent. Any housing provided under those programs pays its full share of local real estate taxes and, save for the federal subsidy provided on behalf of the beneficiary family, is indistinguishable from non-subsidized housing. Such housing creates no different costs or burdens for any local government than would be created by the erection of the identical housing without federal subsidies. The same is true of the leased housing program. Only in the conventional and turnkey programs is the housing entitled to a special status—it is exempt from real estate taxes. Although a payment in lieu of such taxes is provided for,* a suburban government that considered the payment insufficient could simply refuse to execute a cooperation agree-

*42 U.S.C. §1410(h). "The CHA receives no tax funds from the City of Chicago . . . In lieu of taxes, CHA pays to the County Treasurer 10% of all shelter rents charged (rents exclusive of utility costs). Historically, the payments have been more than private owners were billed in real estate taxes the year before the properties were purchased by CHA and redeveloped with public housing." (1971 CHA Annual Report, p. 37, CHA Quarterly Report No. 5, Attachment No. 5, Record Doc. 274.)

ment and thereby avoid the "burden." Again, this possibility supplies no reason for excusing HUD from its remedial obligations respecting its exercise of its own powers.

In short, no suburban municipalities would be party to a metropolitan remedial decree against HUD, none would be subjected to judicial supervision by the entry of such a decree, and none would be subjected to costs or burdens as a result of it.

Allocation of Housing. Finally, the Government asserts that there will be difficulty in determining what proportion of remedial housing units is to be made available to the plaintiff class as against other eligible persons not members of the class. (Br. 38.) This "problem" existed with respect to the City also, for many eligible persons had been deterred from applying for public housing by the HUD-CHA discrimination. (296 F.Supp. at 915.) Yet the need to take their legitimate interests into account was of course not viewed as a reason to deny relief altogether to the plaintiff class. The remedial city order accommodated the interests of both groups by providing that at least 50% of the remedial housing should be offered to members of the plaintiff class and that the balance could be made available to other income eligible persons. (304 F.Supp. at 740.) The 50% figure is of course not magical; the point is that the need to select some figure (or figures—presumably it need not be the same throughout the housing market area) is hardly a reason to deny *any* metropolitan relief.*

*The Government argues that suburban public housing applicants are entitled to the protection of the doctrine that 1964 Civil Rights Act sanctions are to be limited to the particular political entity and program involved in a violation of the Act. (Br. 18-19, n.15.) A remedial

The practical problems to which the Government refers are thus illusory, and in good part rest upon the false suggestion that a metropolitan decree against HUD would entail relief against and judicial supervision over suburban municipalities.

Contrasting with this absence of problems militating against metropolitan relief, the equitable principle of effective relief as embodied in *Louisiana, supra*—"so far as possible [to] eliminate the discriminatory effects of the past"—strongly supports a housing market wide order against HUD. So do the commands of *Davis* v. *Board of School Commissioners*, 402 U.S. 33, 37 (1971), to "use . . . all available [remedial] techniques," and of *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971), that "all reasonable [remedial] methods be available." So do other considerations, such as national housing objectives, HUD's oft-expressed views favoring metropolitan remedies for housing segregation both generally and in the specific context of this case, and HUD's recognition of the housing market area as the relevant geographic unit with respect to the problem of minority concentration in central cities. So also does the lack of sufficient suitable land in the general public housing area of Chicago. In the proceedings before a special master appointed to assist the district judge in implementing the remedial orders, CHA has previously

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• (Continued)

order directed to HUD's administration of subsidized housing programs in the Chicago Housing Market Area *would* be so limited. Apart from that, however, the doctrine relates to the termination or refusal of financial assistance, not to the establishment of funding criteria that would have general applicability, here throughout the housing market area. 42 U.S.C. §2000d-1.

indicated that there may not be enough vacant, residentially zoned parcels left in the general public housing area of the City of Chicago to enable it to supply even the minimal first stage (1500 units—see 436 F.2d 306) of remedial housing, and a recent extensive land survey, the results of which were reported to the master on September 8, 1975, confirms that fact. (Report of Special Master for Period March 3, 1975 to September 3, 1975, September 11, 1975, p. 19.)•

Under all of these circumstances, nothing in *Milliken* or other decisions of this Court requires confining a desegregation decree against HUD to a restricted portion of a housing market area when to do so, as the court of appeals has found, would drastically limit the effectiveness of the decree.

• • •

The separate question of extending metropolitan relief to CHA, or to CHA and other local housing agencies in the housing market area, is not now before the Court. CHA has not sought review of the court of appeals order and other housing agencies may or may not be included in a final remedial decree. Pursuant to the order of the court of appeals for "further consideration of the issue of metropolitan area relief" the district court has per-

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• The shortage of available, suitable land for housing in what the President has called "land-short central cities" (*supra*, p. 10), and the relative abundance of such land in suburban areas, are widely recognized. See, e.g., the Report of the President's Committee on Urban Housing, Technical Studies, Volume II, (G.P.O. 1968), pp. 295 et seq. ("The overwhelming proportion of the urban land base is located outside of central cities, in their surrounding suburbs"—p. 347.) As to Chicago in particular, see pp. 329-31, 338-39. ("Chicago's vacant land supply [is] too small to permit development of more than a token number of low- and moderate-cost units . . ."—p. 330.)

mitted the joinder of other state-created housing agencies operating in the Chicago Housing Market Area, but a final metropolitan remedial order might, as already discussed, be confined to HUD, or might be limited, as now to be considered, to HUD and CHA.* However, because the Government's brief is directed almost exclusively to the issue of metropolitan relief against state-created housing agencies, we deal briefly here with that question. It should be emphasized nonetheless that quite apart from our view that metropolitan relief may properly be extended to CHA, or to CHA and other local housing agencies, housing market area relief directed only against HUD would remain a practical option available to the district judge.

If metropolitan relief were to be extended to CHA, for example, by setting aside the state statute which precludes CHA from operating outside Chicago without

* This does not mean that relief *should* be confined to HUD, or to HUD and CHA, but only that those options are available to the district judge. If the district judge should choose to so limit relief, deference to the Congressional mandate of local responsibility would nonetheless dictate that local housing agencies in the market area participate in formulating the remedial criteria to the extent they desire to do so. In addition, *Milliken* suggests that no metropolitan remedial steps be taken before a full opportunity has been afforded such agencies to assert any agency interests they believe may be affected by such steps, whether or not they choose to participate in the planning. Responsive to these considerations, as well as to those discussed in the text *infra*, the district judge has permitted a supplemental complaint to be filed which joins the housing market area state-created housing agencies. (App. 211)

the consent of others,* the practical and legal situation would still be totally unlike the circumstances the Court confronted in *Milliken*. The boundaries of one local agency —CHA—would in a technical sense be "set aside." But no other local agency would be required to do, or to refrain from doing, anything at all, a significant difference from the *consolidation* of local school districts proposed in *Milliken*. And Illinois law already recognizes that housing low income families is a matter of metropolitan scope. Under Illinois statutes the normal area of operation of a city public housing agency extends three miles into any unincorporated area beyond the city boundary, while the normal area of operation of a county public housing agency embraces the entire county, including any cities within it (subject in both cases to exceptions where other public housing agencies already exist). Ill.Rev.Stat. ch. 67-½, §§3, 17(b). In addition, Illinois public housing agencies may exercise their powers jointly within the area of operation of any one of them, and may operate outside their own areas of operation by contract with other public housing agencies or state public bodies. Ill.Rev.Stat. ch. 67-½, §27c. Of provisions such as these HUD's General Counsel has said:

> "The provisions in State housing authorities laws which authorize a city housing authority to operate

* Nothing more would be required than an order setting aside for the limited remedial purposes of this case the state statute which presently precludes CHA from so acting. Ill.Rev.Stat. ch. 67-½, §27c. Such a form of relief would be closely analogous to an order entered previously in this case, 342 F.Supp. 827, aff'd 480 F.2d 210, cert. denied 414 U.S. 1144, which similarly freed CHA from the fetters of a state statute—which had required CHA to obtain Chicago City Council approval before acquiring real property—found to be obstructing full and effective relief.

> in an area 5 or 10 miles beyond the city's limits and which authorize it to operate in a county or other city with the consent of the governing body concerned, were included in these laws because it was realized that many cities would have to utilize the areas outside their borders in meeting their low-rent housing needs. It was recognized that the elimination of slums and the provision of decent housing for families of low income in the locality are matters of metropolitan area scope but of primary concern to the central city because the problem and impact are intensified there. In effect, therefore, *the State legislatures have determined that the city and its surrounding area comprise a single 'locality' for low-rent housing purposes.*" (Plaintiffs' Exhibit 13, pp. 3-4, emphasis supplied.)

There was no counterpart in *Milliken* to such a determination by the Illinois legislature.

Neither would the Court be dealing with an autonomous local agency such as the local school boards involved in *Milliken*. Instead of local autonomy long thought to be essential to public schooling, 418 U.S. at 741, under the housing assistance program primary responsibility for program administration and authority to contract for the development of subsidized housing independently of local housing agencies has been given to HUD. Even in the case of housing provided jointly by HUD and local housing agencies, local autonomy is severely limited: it is "centered around budget control, audits, rents and eligibility requirements," includes "far less than full control" even as to those matters, and "was not intended to preclude HUD from making rules of broad national policy" or "to regulate matters involving broad national policy." (HUD's Brief in the Eighth Circuit in *Omaha, supra,* Nos. 72-1102 and 72-1185, pp. 25, 19, 21.)

As a consequence, the four equitable considerations of practicality and judicial manageability that were of such

concern in *Milliken* would still be entirely absent or markedly attenuated if metropolitan relief were extended to CHA. For the deeply rooted tradition of local control over schools involved in *Milliken* would be substituted a tradition—intensified in 1974—of overall federal supervision and ultimate federal responsibility for the operation of federal housing programs, together with a specific withdrawal of state supervisory powers over federally supported projects. As in the case of relief confined to HUD, there would be no transportation of persons or consolidation of local governmental systems involved at all. And instead of a complete restructuring of state school laws, a limited suspension of a single state statute would permit CHA to provide housing throughout the market area, something state law already authorizes it to do with the consent of, or jointly with, others.

Even if metropolitan relief were to be extended to other local housing agencies operating within the Chicago Housing Market Area—for example, by directing them to use their best efforts to provide remedial housing within their respective areas of operation, just as CHA is already directed to do within Chicago—concerns about practicality and judicial manageability would similarly remain minimal. As in the case of a metropolitan order directed to CHA, there would still be no transportation ordered and no systems consolidated. Control over local housing agency operations would remain unchanged, subject only to the best efforts requirement. No laws would be restructured—local housing agencies would continue to operate in the same areas as at present. Since a federal equity court has the power to require subdivisions of the state to assist in the vindication of federal constitutional

rights infringed by state agencies,* and since the equitable considerations militating against such action in *Milliken* are largely or wholly absent here, the extension of metropolitan relief to other local housing agencies than CHA would thus also lie within the equitable powers of the court.

CONCLUSION

This case should not be decided by the invocation of a phrase, "inter-district," and speculation as to the provisions of a remedial decree. In *Milliken* the meaning and application of "inter-district" were clear. Whatever precise form the decree might take, at issue was the propriety of consolidating substantially autonomous local school districts for the purpose of making mandatory pupil assignments that would affect large numbers of innocent persons. Here, in the markedly different context of federal housing programs, where no consolidation of local governmental units or coercion respecting individuals is involved, the term "inter-district" obscures the issue if it is uncritically employed to refer to a legal structure and to practical considerations that are wholly unlike those considered by this Court in *Milliken*. Here HUD has itself determined that the housing market area is the appropriate geographic area for addressing the problem of remedying the effects of past housing discrimination presented in this case. Here also there is evidence both of discrimination by HUD in suburban areas and of the impact of such discrimination across city-suburban lines.

* See authorities cited in the court of appeals opinion below, 503 F.2d at 934. The power was assumed *arguendo* in *Milliken*, 418 U.S. at 748.

Finally, an array of factors here supports some form of metropolitan relief not only as an "available technique," *Davis* v. *Board of School Commissioners, supra,* but, as HUD itself virtually acknowledges, as an essential tool to provide an effective remedy for the persistent effects of federal constitutional and statutory violations. The decision of the court of appeals should therefore be affirmed so that appropriate and effective remedial arrangements can be explored by the district court with the traditional flexibility, subject to the traditional limitations, of equity powers.

Respectfully submitted,

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APPENDIX A

List of Some Metropolitan Remedial Possibilities

1. HUD to condition the availability of housing subsidy funds allocated to the Chicago Housing Market Area upon criteria respecting location and availability to the plaintiff class similar to those now in force in Chicago.

2. HUD to use its best efforts to see to it that housing subsidy funds allocated to the Chicago Housing Market Area are in fact utilized by housing developers.

3. Ill.Rev.Stat. ch. 67½, §27c, to be set aside as to CHA for the remedial purposes of the case, thereby authorizing CHA to provide remedial housing within the Chicago Housing Market Area, and CHA to be ordered to use its best efforts to do so.

4. Other state-created housing agencies operating federally subsidized housing programs within the Chicago Housing Market Area to be ordered to use their best efforts to provide remedial housing within the Chicago Housing Market Area subject to criteria respecting location and availability to the plaintiff class similar to those now in force in Chicago.

5. The Illinois regional planning agency having jurisdiction over the Chicago Housing Market Area to be ordered to assist HUD by providing a locally prepared plan respecting distribution of remedial housing within the Chicago Housing Market Area.*

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*The Northeastern Illinois Planning Commission (NIPC), a state-created regional planning agency, has jurisdiction by Illinois law over the identical area which comprises the Chicago Housing Market Area. Ill.Rev.Stat.

This list of remedial possibilities suggests the variety of options open to the district court on remand. Thus, housing market area relief could be confined to the first option, or to the first and second, or to the first, second and third, and so on. None of the options, singly or in combination, involves the consolidation of any local government entities for administrative or other purposes, or precludes or interferes with the continued independent operation of local housing agencies. Relief confined to the first option, or to options one and two, would provide substantially the relief in the housing market area that has been afforded in Chicago without involving local housing agencies at all, and options one, two and three would provide the identical relief in the housing market area that has already been afforded in Chicago without involving local housing agencies other than CHA.

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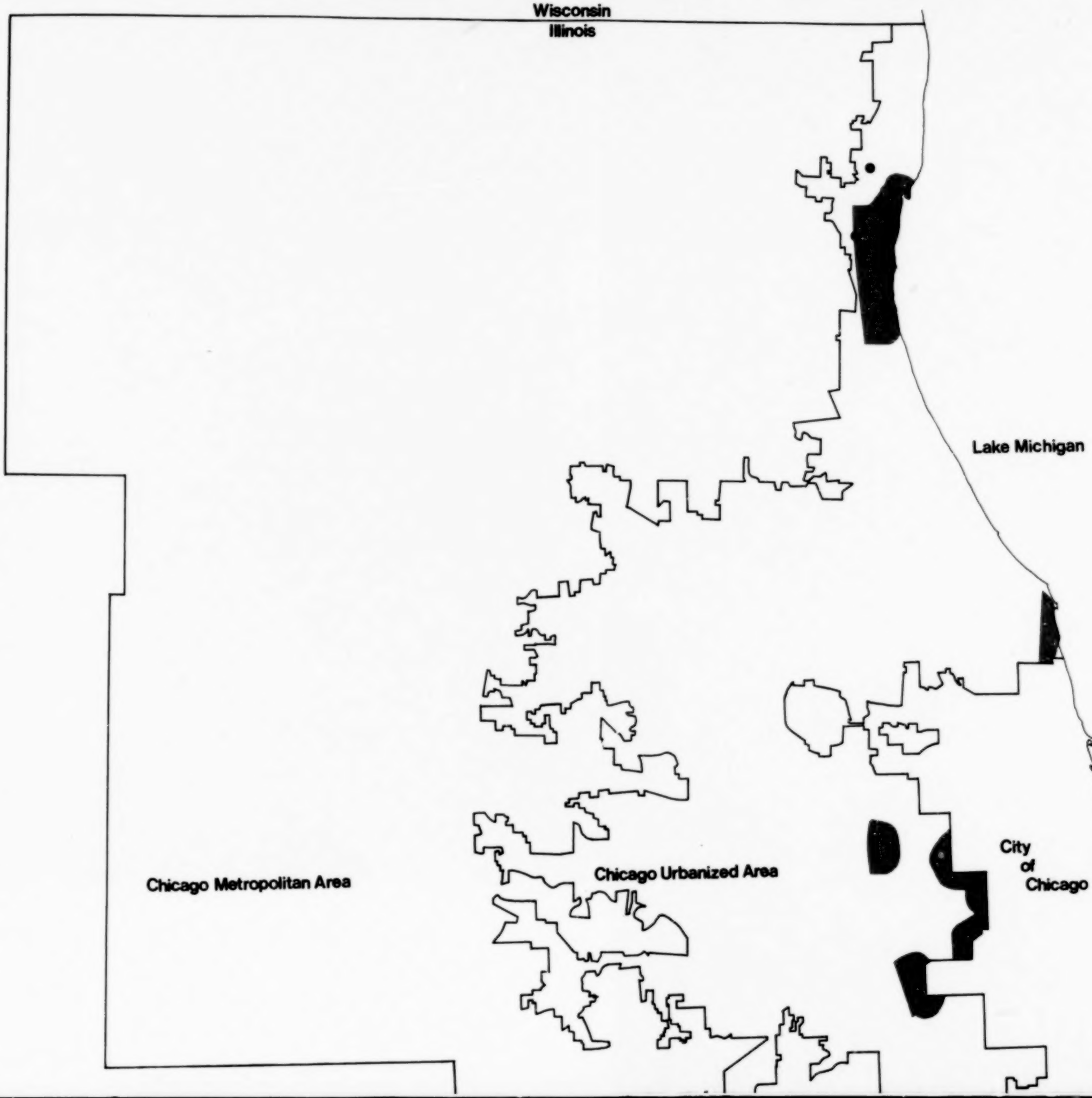
* (Continued)
ch. 85, §1103. NIPC is already required by federal statute to include a "housing element" in its regional planning activities, and receives HUD funds for this and other planning purposes. (App. B, pp. 18-23, to Response of George Romney, April 26, 1972.) HUD represented to the district court that at its request NIPC was already undertaking a study to identify suitable places within the housing market area for subsidized housing. (*Id.*, 23-24.)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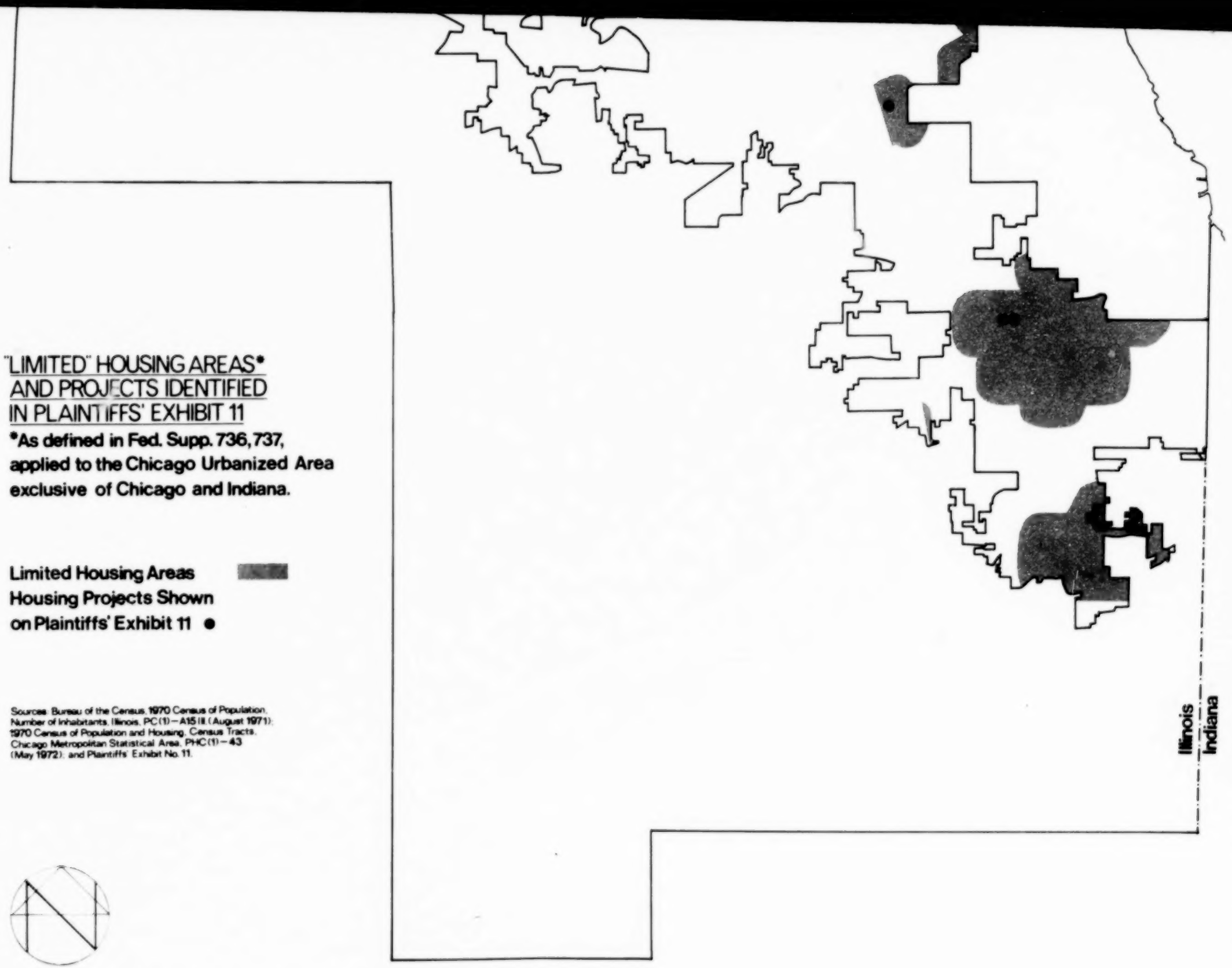

"LIMITED" HOUSING AREAS* AND PROJECTS IDENTIFIED IN PLAINTIFFS' EXHIBIT 11

***As defined in Fed. Supp. 736, 737, applied to the Chicago Urbanized Area exclusive of Chicago and Indiana.**

Limited Housing Areas

Housing Projects Shown on Plaintiffs' Exhibit 11 ●

Sources: Bureau of the Census, 1970 Census of Population, Number of Inhabitants, Illinois, PC(1)—A15 Ill. (August 1971); 1970 Census of Population and Housing, Census Tracts, Chicago Metropolitan Statistical Area, PHC(1)—43 (May 1972); and Plaintiffs' Exhibit No. 11.

N

appendix B